

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of KTEH-TV Foundation      CSR-4180-M  
against Chambers Communications      CA0107  
Corp.

Request for Carriage

#### MEMORANDUM OPINION AND ORDER

Adopted: May 11, 1994;

Released: May 20, 1994

By the Chief, Cable Services Bureau:

1. On January 5, 1994, a petition on behalf of KTEH-TV Foundation, licensee of Television Broadcast Station KTEH (Educ., Ch. 54), San Jose, California, was filed with the Commission<sup>1</sup> claiming that Chambers Communications Corp. ("Chambers"), operator of a cable television system serving Novato, California,<sup>2</sup> had deleted the station as of June 2, 1993, because it had determined that the Grade B contour of KTEH does not encompass the system's principal headend located at Novato at north latitude 38°06'47" and west longitude 122°32'57" and, therefore, the station is not a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).<sup>3</sup> An opposition to this petition was filed February 3, 1994, on behalf of Chambers.

2. In support of its request, KTEH states that it was carried on the Novato system on March 29, 1990,<sup>4</sup> and had been told verbally by Chambers that the signal the system received from KTEH was "excellent." However, KTEH indicates that by letter dated April 28, 1993, Chambers notified it that it would be deleted from the system on June 2, 1993, because the system headend was located outside the predicted Grade B contour of KTEH as filed with the Commission. On October 4, 1993, KTEH states that engineers from both its station and Chambers jointly measured KTEH's signal at 90.5 dBu/m at the Novato headend. Subsequently, KTEH requested carriage a second time, but it avers that it was again denied such carriage by Chambers. KTEH argues that, pursuant to §73.683(b) of the rules, the Grade B predicted contour curves of the station should be modified to include the Novato headend based on actual signal strength measurements and it submits maps and engineering data to support this request. KTEH

asks that the Commission rule that the Novato system headend falls within KTEH's Grade B contour and order Chambers to carry its signal.

3. In its opposition, Chambers states that it is not obligated to carry KTEH because it does not meet the definition of a qualified noncommercial educational television station. See §615(1)(2) (47 U.S.C. 535). Further, Chambers argues that KTEH's reliance on an actual Grade B contour is misplaced. Chambers maintains that §615(1)(2)(B) of the 1992 Cable Act provides that the only approved definition of an NCE station's Grade B service contour is that contained in §73.683(a) of the Commission's Rules which mandates the use of predicted, not actual, contours. Finally, Chambers argues that KTEH's claim that it provides good signal quality at the system's headend is irrelevant. Chambers avers that there is no provision in the Act which requires the carriage of an ineligible NCE station because it provides a good signal.

4. We are not persuaded by KTEH's request to be considered local on the Novato system. First, KTEH's reliance for its reinstatement due to its carriage on the Novato system as of March 29, 1990, is in error. Section 615(c) states that "all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990." (emphasis supplied). Section 76.55(b) of the Commission's Rules defines a qualified noncommercial educational station as either one whose community of license is located within fifty miles of a cable system's principal headend or one whose Grade B service contour encompasses the principal headend. Since KTEH does not meet either of these definitions, Chambers was not obligated to continue its carriage on this ground. Further, when the Commission adopted its prescribed prediction method for the calculation of Grade B contour in the mid-1970's, we recognized that the Grade B contour was not a wall within which all services provided by a television station were confined, and, therefore, the determination of its location by the most precise means available may not be well worth the complication which might be involved. Since the contour prediction method, as prescribed by the Commission, is primarily an administrative tool, it seems clear that contours should be located by means which promote the most efficient administration, i.e., by a relatively simple procedure which produces a speedy and unequivocal result. That policy still holds true today and may well have been the intent of Congress in the 1992 Cable Act when it cited §73.683(a) as the sole reference for Grade B contour definitions. Cognizant of the above policy, the Commission is hereby rejecting KTEH's request to redefine its Grade B contour relative to the Novato cable system. Indeed, such a request, if appropriate, could only be determined through a rulemaking proceeding, not in the instant decision. Relying on the Commission's prescribed predicted Grade B contour method, KTEH does not encompass the Novato headend and, therefore, it does not qualify for must-carry status under this criterion on the Novato system.

<sup>1</sup> An earlier petition (CSR-4118-M) was filed by KTEH on June 22, 1993. However, since this petition was apparently superseded by the current filing, we hereby dismiss CSR-4118-M as moot.

<sup>2</sup> KTEH states that Chambers also generally serves the communities of Bel Marin Keys, Ignacio, Loma Verde and San Marin,

California.

<sup>3</sup> We note also that KTEH's city of license, San Jose, is more than 50 miles from Novato, California.

<sup>4</sup> KTEH indicates that it has been carried on the Novato system since at least 1985.

5. In view of the foregoing, therefore, the 1992 Cable Act does not entitle KTEH to mandatory carriage on the Chambers cable television system serving Novato, California, and the complaint filed January 5, 1994, IS DISMISSED pursuant to authority delegated by §0.321 of the Commission's Rules and §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson, Deputy Chief  
Cable Services Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of KTEH-TV Foundation  
against Viacom Cable

CSR-4181-M

Request for Carriage

# MEMORANDUM OPINION AND ORDER

Adopted: August 11, 1994;

Released: August 24, 1994

By the Chief, Cable Services Bureau:

1. On January 5, 1994, a petition on behalf of KTEH-TV Foundation, licensee of Television Broadcast Station KTEH (Educ., Ch. 54), San Jose, California, was filed with the Commission claiming that Viacom Cable ("Viacom"), operator of a cable television system serving Marin, Napa, Petaluma, Pinole, Crockett and American Canyon, California,<sup>1</sup> had deleted the station as of June 2, 1993, because it had determined that the Grade B contour of KTEH does not encompass the system's principal headend located at Big Rock Ridge, California at north latitude 38°03'20" and west longitude 122°35'53" and, therefore, the station is not "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). An opposition to this petition was filed February 15, 1994, on behalf of Viacom.

2. In support of its request, KTEH states that it was carried on the Marin system on March 29, 1990.<sup>2</sup> However, KTEH indicates that by letter dated April 30, 1993, Viacom notified it that it would be deleted from the system on June 2, 1993, because the system headend was located outside the predicted Grade B contour of KTEH as filed with the Commission. On July 7, 1993, KTEH states that engineers from both its station and Viacom jointly measured KTEH's signal at 92.8 dBu/m at the Big Rock Ridge headend. Subsequently, KTEH requested carriage a second time, but it avers that it was again denied such carriage by Viacom. KTEH argues that, pursuant to §73.683(b) of the rules, the Grade B predicted contour curves of the station should be modified to include the Big Rock Ridge headend based on actual signal strength measurements and it submits maps and engineering data to support this request. KTEH asks that the Commission rule that the Big Rock Ridge system headend falls within KTEH's Grade B contour and order Viacom to carry its signal.

3. In its opposition, Viacom states that KTEH's petition was untimely because it was not filed with the Commission within sixty days of Viacom's June 14, 1993 notification as

required by §76.7(c)(4)(iii)(B) of the Commission. It maintains further that it is not obligated to carry KTEH because it does not meet the definition of a qualified noncommercial educational television station. See §615(1)(2) (47 U.S.C. 535). Further, Viacom argues that KTEH's engineering showing is misplaced. Viacom maintains that §615(1)(2)(B) of the 1992 Cable Act provides that the only approved definition of an NCE station's Grade B service contour is that contained in §73.683(a) of the Commission's Rules which mandates the use of predicted contours. To allow individual Grade B showings such as KTEH proposes, avers Viacom, would cause excessive hardship and exacerbate the already substantial burdens imposed by the must carry rules. Finally, Viacom argues that while there are specifically established procedures to demonstrate whether a station delivers a good quality signal, those procedures only apply to stations which are entitled to carriage.

4. We are not persuaded by KTEH's request to be considered local on the Marin system. First, KTEH's reliance for its reinstatement due to its carriage on the Marin system as of March 29, 1990, is in error. Section 615(c) states that "all cable operators shall continue to provide carriage to all qualified local noncommercial educational television stations whose signals were carried on their systems as of March 29, 1990." (emphasis supplied). Section 76.55(b) of the Commission's Rules defines a qualified noncommercial educational station as either one whose community of license is located within fifty miles of a cable system's principal headend or one whose Grade B service contour encompasses the principal headend. Since KTEH does not meet either of these definitions, Viacom was not obligated to continue its carriage on this ground.

5. Further, we agree that KTEH's suggested methodology for demonstrating signal availability is not appropriate here. It was recognized when the Commission first adopted its television broadcast signal contour prediction system, that a service contour does not represent a point at which a signal's availability abruptly terminates or conversely that a signal is always available within the contour. Rather the Commission recognized, and the rules reflect, that such contours are useful administrative tools for establishing rights and responsibilities of individual stations and parties in a variety of areas from ownership regulation to interference protection. Given that signals gradually diminish in strength with distance and that reception varies according to equipment and terrain features, no absolute rather than statistical measure is available. Predicted service contours nevertheless have been widely used as a means of fixing service boundaries that can be calculated with a minimum of expense and dispute. The use of the Grade B contour standard in the mandatory carriage rules, reflects this desire to have a readily available standard. Thus, KTEH's proposal to use a different process that is not consistent with this objective is not acceptable here. Relying on the Commission's prescribed predicted Grade B contour method, KTEH does not encompass the Marin headend and, therefore, does not qualify for must-carry status under this criterion on the Marin system.

<sup>1</sup> KTEH states that Viacom also generally serves the communities of San Rafael, Belvedere, South Sausalito, Sausalito, Corte Madera, Tiburon, Larkspur, Fairfax, Ross, Mill Valley, San Anselmo and adjacent and nearby unincorporated portions of

Marin County, California.

<sup>2</sup> KTEH indicates that it has been carried on the Marin system since at least 1985.

6. In view of the foregoing, therefore, the 1992 Cable Act does not entitle KTEH to mandatory carriage on the Viacom cable television system serving Marin, California, and the complaint filed January 5, 1994, IS DISMISSED pursuant to authority delgated by §0.321 of the Commission's Rules and §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Acting Chief, Cable Services Bureau

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

November 14, 1994

IN REPLY REFER TO:

Russell Spain, Station Manager  
KUID-TV  
Radio TV Center  
University of Idaho  
Moscow, Idaho 83844-3101

Re: Must-Carry Complaint  
Idaho Public Television  
(KUID-TV)  
CSR-4267-M

Dear Mr. Spain:

On June 6, 1994, you filed a must-carry complaint on behalf of KUID-TV, Moscow Idaho, claiming that Northwest Cable had declined to carry station KUID-TV on its over-the air channel on its systems serving Plummer Idaho, and Garfield Washington. Subsequently, by letter dated October 19, 1994, you requested dismissal of this complaint as KUID-TV and Northwest Cable have privately resolved their dispute regarding carriage.

In view of the foregoing, pursuant to §0.321 of the Commission's Rules, the must-carry complaint filed June 6, 1994, is dismissed.

Sincerely,



Ronald Parver  
Chief, Technical Services Team  
Cable Services Bureau

cc: Richard Hildreth, Esq.  
Bill Musko, Northwest Cable



## IDAHO PUBLIC TELEVISION

KUID/KGDT • Radio TV Center, University of Idaho • Moscow, Idaho 83844-3101  
FAX (208) 885-5711 • Phone (208) 885-1226 • Toll Free (800) 424-1226

Public Broadcasting • Educational Services Delivery • Program Production • Video Conferencing • Learning Link

October 19, 1994

Meredith Jones  
Federal Communications Commission  
Washington DC 20554

RE: Must-Carry Complaint

Dear Mr. Jones,

On June 6, 1994, I filed a must-carry complaint for denial of carriage by Northwest Cable, PO Box 11706, Spokane, WA 99211. Since that time, I have learned that we are carried on the Garfield, Washington system owned by Northwest Cable. In addition, I have been contacted by Mr. Bill Yusko, owner of Northwest Cable serving Plummer, Idaho. On June 20, 1994, Mr. Yusko informed me that his headend for Plummer was located in Worley, Idaho, approximately 6 miles northwest of Plummer, and that he could not receive a consistent usable signal from KUID-TV or any of the translators that retransmit our signal at his headend. We have since had our technicians verify signal strength in Worley, Idaho and they support Mr. Yusko's findings.

For these reasons, I respectfully request that my complaint filed June 6, 1994 be withdrawn until such time that KUID-TV is technically able to provide a consistent, usable signal to the headend of Northwest Cable providing service to Plummer, Idaho.

Respectfully yours,

Russell K. Spain  
Station Manager

cc: Northwest Cable  
City Clerk, Plummer  
City Clerk, Garfield

KUID-12  
Moscow

KGDT-26  
Coeur d'Alene

KAID-4  
Boise

KIPT-13  
Twin Falls

KISU-10  
Pocatello

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

9 AUG 1993

IN REPLY REFER TO:  
4410-AG

Colin Dougherty, General Manager  
Station KVPT  
1544 Van Ness Avenue  
Fresno, California 93721

In re: Valley Public Television, Inc.  
CSR-3744

Dear Mr. Dougherty:

On July 1, 1993, you filed a letter on behalf of Valley Public Television, Inc., licensee of Television Broadcast Station KVPT (Educ., Channel 18), Fresno, California. In its letter, KVPT requests review of the decision in Valley Public Television, Inc. against UACC Midwest, Inc., DA 93-692 (released June 24, 1993), which held that KVPT was not entitled to mandatory carriage on the cable system serving Merced, California, because the system's headend, purportedly at Cressey, California, was more than fifty miles from the reference point of KVPT's principal community, and it was also beyond KVPT's Grade B contour. However, you note that, on May 3, 1993, UACC Midwest, Inc. d/b/a TCI Cablevision of Merced County ("TCI") identified its headend as being in Merced at a location at latitude 037 17 32 N and longitude 120 30 21 W, which you state is well within KVPT's Grade B contour. TCI has not opposed the request for review.

Staff review of the new information submitted in your July 1 letter confirms that the headend location identified by TCI for the Merced system is within KVPT's Grade B contour, and the station is thus entitled to mandatory carriage pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended.<sup>1</sup>

Accordingly, the request for reconsideration filed July 1, 1993, by Valley Public Television, Inc. is granted, pursuant to §§0.283 and 1.106 of the Commission's Rules, and UACC Midwest, Inc. d/b/a TCI Cablevision of Merced County IS ORDERED to commence carriage

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<sup>1</sup> We note that either KVPT or TCI should have informed the Commission of the actual location of the system's headend, which was identified on May 3, 1993, before the Commission released its decision on June 24, 1993. We nonetheless will consider the headend's actual location in order to serve the public interest. See §1.106(c) of the Commission's Rules.

of Television Broadcast Station KVPT on its cable television system serving Merced, California, forty-six days from the date of this letter. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

Sincerely,

  
Roy J. Stewart  
Chief, Mass Media Bureau

cc: Robert G. Scott, Jr., Esq.

FEDERAL COMMUNICATIONS COMMISSION **G**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Roy J. Stewart  
Chief, Mass Media Bureau

In re:

Complaint of Valley Public  
Television, Inc. against  
UACC Midwest, Inc. CSR-3744

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1993;

Released: June 24, 1993

By the Chief, Mass Media Bureau:

1. On December 4, 1992, the mandatory carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), became effective for certain noncommercial educational stations. On January 27, 1993, a complaint on behalf of Valley Public Television, Inc., licensee of Television Broadcast Station KVPT (Educ. Channel 18), Fresno, California, was filed with the Commission claiming that the station is entitled to carriage by the cable television system serving Merced, California. UACC Midwest, Inc., d/b/a TCI Cablevision of Merced County, ("TCI"), because the station's community of service is within fifty miles of TCI's headend at Cressey, California, as demonstrated by Attachment "B" of the complaint.

2. On April 14, 1993, TCI filed an opposition to the complaint, however, stating that Attachment "B", *supra*, clearly demonstrates that its headend at Cressey is entirely outside KVPT's Grade B contour, and that Cressey is more than fifty miles from any point within the boundaries of Fresno, KVPT's city of license. TCI adds that the "Declaration" submitted with the complaint does not constitute an affidavit, as prescribed by Commission rules.

3. In response, KVPT-TV submits a revised "Declaration" stating that it has not had a *specific* statement from TCI concerning the location of its single or multiple headends, and that since KVPT is the most local signal TCI can receive, the Commission should uphold its complaint under the spirit of the 1992 Cable Act and the promotion of local broadcasters.

4. Staff review of the issues raised and of the materials submitted in this matter fails to demonstrate either that TCI's headend lies within KVPT's Grade B contour or that TCI's headend is fifty miles or less from the reference point of KVPT's principal community. Therefore, the 1992 Cable Act does not entitle KVPT to mandatory carriage on the Merced cable television system, and the complaint filed January 27, 1993, by Valley Public Television, Inc. IS DISMISSED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

**DOW, LOHNES & ALBERTSON**

ATTORNEYS AT LAW

1255 TWENTY-THIRD STREET

WASHINGTON, D.C. 20037-1194

(KvPT)

TELEPHONE (202) 857-2900

December 13, 1994

FACSIMILE (202) 857-2900

DAVID J. WITTENSTEIN

DIRECT DIAL NO

857-2782

Pamela Pusey, Esq.  
Cable Services Bureau  
Federal Communications Commission  
2033 M Street, N.W.  
Room 908  
Washington, D.C. 20554

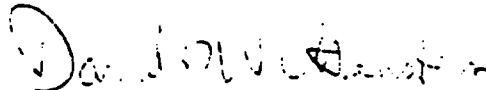
Re: Valley Public Television, Inc. v. Cox Cable  
Bakersfield, Inc.  
CSR No. 3763

Dear Ms. Pusey:

On behalf of Cox Cable Bakersfield, Inc. ("Cox"), this letter confirms my telephone conversation with Angela Green of your office regarding Cox's carriage of translator station K65EY. On December 30, 1992, Valley Public Television, Inc. ("Valley"), licensee of K65EY, filed a complaint for mandatory carriage of its signal on Cox's system. Cox began to carry K65EY's signal on October 6, 1993 and has carried the signal continuously since then. Therefore, Cox respectfully requests that Valley's complaint for mandatory carriage be dismissed as moot.

If you have any questions about this matter or this request, please contact me.

Respectfully submitted,

  
David J. Wittenstein

cc: Angela Green, Esq.  
Colin Daugherty

JUN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

IN REPLY REFER TO:  
4410-AG

JUN 2 1994

Richard Hildreth, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street, 11th Floor  
Rosslyn, Virginia 22209

In re: Valley Public Television, Inc.  
CSR-3764; CA0297  
CSR-3765; CA0143

Dear Mr. Hildreth:

On January 26, 1994, you requested that the Commission dismiss both of the above proceedings filed January 5, 1993 on behalf of your client, Valley Public Television, Inc., licensee of Television Broadcast Station KVPT (Educ., Channel 18), Fresno, California, because the station is now being carried by the cable television systems serving the California communities of Bakersfield (Warner Cable Communications) and of Lamont and Arvin (American Cablevision).

Accordingly, pursuant to §§0.283 and 76.8(a) of the Commission's Rules, both of the above cases are hereby dismissed.

Sincerely,

Alexandria M. Wilson  
Acting Chief, Cable Services Bureau

cc: Michael H. Hammer, Esq.

FEDERAL COMMUNICATIONS COMMISSION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Roy J. Stewart  
Mass Media Bureau

In re:

Complaint of the Central Washington Association for Public Telecommunications against TCI Cablevision of Wenatchee, Inc. CSR-3752 WA0116

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1993; Released: June 24, 1993

By the Chief, Mass Media Bureau:

1. On February 1, 1993, a petition on behalf of the Central Washington Association for Public Telecommunications, licensee of Station KYVE-TV (Educ., Channel 47), Yakima, Washington, was filed with the Commission claiming that TCI Cablevision of Wenatchee, Inc. ("TCI"), operator of a cable television system serving Wenatchee, Washington had declined to carry the station by letter dated January 7, 1993, even though the Grade B contour of KYVE-TV encompasses TCI's principal headend at Wenatchee, by means of the Television Broadcast Translator Station, K18AD, Wenatchee.

2. In its letter declining to carry KYVE-TV, TCI cited the *Standstill Order* and the litigation addressing the constitutionality of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) pending in *Turner Broadcasting System, Inc., et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992).

3. The *Standstill Order* deferred any Commission action regarding educational television stations' complaints of non-carriage for 120 days, or until an appealable order of the Court was entered. However, it did not preclude the filing of complaints regarding carriage disputes or delay the schedule for the filing of responsive pleadings. On April 8, 1993, the Court issued its opinion in this case upholding the provisions of the 1992 Cable Act and terminating the *Standstill Order*.

4. Since no other pleadings were filed in this matter within the fifteen (15) day period specified by the Commission in its Public Notice, Mimeo No. 32419 (released March 26, 1993), the complaint filed February 1, 1993, by Central Washington Association for Public Telecommunications IS GRANTED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Wenatchee, Inc. and IS ORDERED to commence carriage of KYVE-TV forty-six (46) days from the date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaints of Maine Public  
Broadcasting Corporation  
against A-R Cable Services  
d/b/a Cablevision

CSR 4397-M

CSR 4398-M

Petitions for Declaratory Ruling and  
Requests for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: February 8, 1995; Released: March 7, 1995

By the Cable Services Bureau:

INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") became law.<sup>1</sup> On December 4, 1992, the 1992 Cable Act's requirements for mandatory carriage of certain noncommercial educational stations set forth in §5 of the 1992 Act became effective. On October 6, 1994, Maine Public Broadcasting Corporation ("MPBC"), licensee of noncommercial translator stations W39BQ, Lewiston, Maine, and W30BF, Bangor, Maine, (the "Stations") filed separate petitions for declaratory ruling seeking to ensure the Stations' carriage on A-R Cable Services cable systems (d/b/a Cablevision) ("A-R" or "Cablevision") serving several Maine communities.<sup>2</sup> On December 13, 1994, A-R filed separate oppositions/requests for stay to these complaints.<sup>3</sup> On December 23, 1994, MPBC filed separate replies to these oppositions/requests for stay. We shall jointly consider the two petitions since there is commonality between the parties and the issues.

SUMMARY OF PLEADINGS

2. In its petitions for declaratory ruling, MPBC explains that it is a 501(c)(3) corporation operating noncommercial educational TV and radio stations throughout the State of Maine. MPBC further explains that W39BQ and W30BF both translate the signal of full power noncommercial educational television station WMEA-TV, Biddeford, Maine<sup>4</sup> and that W39BQ operates with an effective radiated power of 9.2 kilowatts while W30BF operates with an effective radiated power of 33.65 kilowatts. MPBC asserts that both stations serve the cable operator's franchise areas and both stations are considered "local" because their communities of license are within 50 miles of Cablevision's principal headends. MPBC asserts Cablevision has acknowledged that the Stations qualify for mandatory carriage rights on its cable systems but has not yet initiated carriage for either of them. MPBC asks the Commission to issue orders requiring Cablevision to carry W30BF and W39BQ.

3. In its oppositions, Cablevision presents three arguments explaining why it should not be required to carry either W30BF or W39BQ. First, Cablevision submits that WMEA, through the Stations at issue, airs programming substantially similar to that of WCBB, another MPBC noncommercial educational television station already carried on the systems. Cablevision argues that MPBC is simply using the must carry rules to expand the coverage area of WMEA, a non-local station that otherwise would provide no service to the cable communities. Second, Cablevision asserts that granting MPBC's requests would have a significant adverse impact on Cablevision's business. Cablevision explains that carriage of the Stations would result in financial losses related to new equipment expenses, costs of notifications to subscribers, and loss of revenue due to the deletion of a cable programming service.<sup>5</sup> Finally, Cablevision argues that mandatory carriage of the Stations would abridge its First Amendment rights by forcing it to add to its programming line-up "a governmentally favored class of speaker - a noncommercial educational broadcaster - in place of a cable programmer whom Cablevision would prefer to carry." In this regard, Cablevision, noting the Supreme Court's remand order in *Turner Broadcasting System, Inc. v. FCC*,<sup>6</sup> asks that the Commission defer consideration of MPBC's petitions until a final determination has been made concerning whether the must carry provisions of the 1992 Cable Act comport with the First Amendment.

4. In its replies, MPBC asserts that Cablevision's arguments challenging W30BF and W39BQ's carriage rights are unpersuasive. MPBC first asserts that WCBB's programming is not duplicative of WMEA's because the former caters to a wide, prime-time audience while the latter

<sup>1</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>2</sup> MPBC requests carriage of W39BQ on A-R's systems serving Auburn, Sabattus, the Lisbons, Oxford, and Mechanics Falls. MPBC requests carriage of W30BF on A-R's systems serving Bar Harbor, Bass Harbor, Bernard, Bucksport, Ellsworth, Manset, Southwest Harbor, Tremont, Verona, Bangor, Bradley, Brewer, Corrina, Dexter, Dover-Foxcroft, East Holden, Eddington, Hampden, Holden, Lincoln, Indian Island, Millford, Newport, Old Town, Orono, Orrington, Penobscot Plantation, Stillwater, Veazie, Winterport, Belfast, Searsport, and Winterport.

<sup>3</sup> On November 22, 1994, Cablevision filed separate motions for extension of time to respond to MPBC's petition for declaratory ruling. On November 30, 1994, MPBC filed its oppositions to A-R's motion for extension of time. We do not address the

merits of the oppositions since we decide in favor of MPBC and order carriage of W39BQ and W30BF on Cablevision's cable systems.

<sup>4</sup> According to petitioner, WMEA-TV is licensed to MPBC and is eligible to receive a CSG from the Corporation for Public Broadcasting under Section 396(k)(6)(B) of the Communications Act of 1934 as amended.

<sup>5</sup> Cablevision estimates that it would incur losses of \$36,700 in the first year, and \$28,000 each year thereafter if it were required to carry W30BF. Additionally, Cablevision estimates that mandatory carriage of W39BQ would cause losses of \$100,000 in the first year and \$92,000 each additional year.

<sup>6</sup> See para. 8, *infra*.

DA-95-192

Federal Communications Commission

499806

broadcasts programming to targeted and dedicated audiences and "provides a more educational and instructional focus."<sup>7</sup> As for Cablevision's argument that carriage of the Station's would negatively affect its business, MPBC asserts that the operator's expenses are "speculative and conjectural" since Cablevision fails to provide any evidence to document its figures. MPBC also argues that even if Cablevision's expenses were substantiated, the 1992 Cable Act does not take into account a cable operator's costs in determining the existence of mandatory carriage rights. Finally, MPBC argues that Cablevision's constitutional argument and request for a stay are without merit because the 1992 Cable Act's must carry provisions and the Commission's must carry rules remain in effect. MPBC also asserts that Cablevision acknowledges that the Commission cannot declare the must carry provisions unconstitutional. MPBC closes its replies by arguing that the public interest would be "substantially harmed" by delay of the Stations' carriage because Cablevision's service areas are deprived access to "unique and valuable noncommercial programming."

#### DISCUSSION

5. We uphold the Stations' complaints against Cablevision. Initially, it is important to note that noncommercial translator stations, such as W39BQ and W30BF, have signal carriage rights.<sup>8</sup> Congress determined that translators should be carried because they are particularly important to state public television networks, like MPBC, in extending television signals to rural areas that are located far from the principal communities of the main station.<sup>9</sup> Based on the facts presented by MPBC, we find that W39BQ and W30BF are qualified noncommercial educational translator stations, meet the goals of Congress, and are entitled to carriage on Cablevision's systems.

6. We also agree with the Stations that their programming schedule is not substantially duplicative of WCNB, the other noncommercial station carried on Cablevision's systems. Our rules require cable systems with more than 36 usable activated channels to carry the signals of at least three qualified local NCE educational stations.<sup>10</sup> However, a cable system with more than 36 channels shall not be required to carry stations whose programming substantially duplicates the programming of another qualified local NCE station.<sup>11</sup> A station is deemed to substantially duplicate the programming of another station if it broadcasts the same programming, simultaneous, or non-simultaneous, for

more than 50 percent of prime time, as defined in section 76.5(n) of our rules, and more than 50 percent outside of prime time over a three month period.<sup>12</sup> The stations have demonstrated through the submission of detailed program logs that their programming does not substantially duplicate the programming provided by WCCB. As such, the operator cannot rightfully deny the stations' carriage requests on this basis.

7. With respect to A-R Cable Services' argument that it be excused from compliance with the applicable provisions of the law because of the expense of compliance, we note that the obligations in question are statutory requirements and that A-R Cable Services has cited no authority for the Commission to waive the statute in the manner requested. No such authority is explicitly set forth in sections 614 and 615 of the 1992 Cable Act.<sup>13</sup>

8. Finally, we find that Cablevision's constitutional argument is without merit and deny the operator a stay of our signal carriage rules. The constitutionality of the must carry provisions of the 1992 Cable Act were challenged before the Supreme Court. In *Turner Broadcasting Systems, Inc. v. FCC*, a special three-judge panel of the District Court for the District of Columbia found the must carry provisions constitutional.<sup>14</sup> On appeal, the Supreme Court vacated the decision and remanded the case back to the three judge panel for further proceedings.<sup>15</sup> However, the Court did not stay the statute's must carry provisions or our rules while the case is on remand. Thus, while the case is pending, the must-carry provisions of the 1992 Cable Act remain in effect, as do the Commission's must-carry rules.<sup>16</sup> We believe it would run contrary to the public interest to grant a stay and deny the stations the right to enforce their valid signal carriage rights in this instance.

9. Accordingly, the petitions filed on October 6, 1994, by Maine Public Broadcasting Corporation, ARE GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended. A-R Cable Services IS ORDERED to commence carriage of W39BQ and W30BF on its cable systems within forty-five (45) days from the release date of this Order.

10. This action is taken pursuant to authority delegated by section 0.321 of the Commission's Rules.

<sup>7</sup> MPBC includes as exhibits WCCB's and WMEA's daily programming line-up for a typical week to show that the two station's are not substantially similar.

<sup>8</sup> 47 U.S.C. §535(l)(1); 47 C.F.R. §76.55(a)(3)(1). The only conditions which attach are that the translator must operate with five watts of power or higher and that it serves the franchise area. *Id.* We recently held that, for purposes of a translator serving the cable system's franchise area, the coverage area of such translator shall be its predicted protected contour as specified in section 74.707 of the Commission's rules. See *Memorandum Report and Order* in MM Docket No. 92-259, (Broadcast Signal Carriage Issues), FCC 94-251 (released November 4, 1994) at ¶ 4.

<sup>9</sup> See H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 104 (1992) (including translators in the definition of qualified noncommercial educational stations ensures carriage by cable systems in remote areas not served by the primary public television licensee.)

<sup>10</sup> 47 C.F.R. §76.56(a)(1)(iii).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at note.

<sup>13</sup> The 1992 Cable Act did provide the Commission with the authority to waive the channel positioning provisions under extenuating circumstances. See *Broadcast Signal Carriage Issues*, 8 FCC Rcd 2065 at para. 91 (1993) ("Only where placement of a signal on a chosen channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem, will we permit cable operators to carry a broadcast signal on a channel not chosen by the station.") Compare *Johnson v. Robinson*, 415 U.S. 361, 368 (1974).

<sup>14</sup> See *Turner Broadcasting Systems, Inc. v. FCC*, 819 F. Supp. 32 (D.D.C. 1993).

<sup>15</sup> See *Turner Broadcasting Systems, Inc. v. FCC*, 114 S. Ct. 2445 (1994).

<sup>16</sup> See *Memorandum Report and Order*, FCC 94-251 at ¶ 2.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Maine Public  
Broadcasting Corporation  
against United Video Cablevision, Inc.  
Request for Carriage

CSR 4447-M

#### MEMORANDUM OPINION AND ORDER

Adopted: April 26, 1995

Released: May 4, 1995

By the Cable Services Bureau:

#### I. INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 (Cable Act) became law.<sup>1</sup> On March 11, 1993 the Commission adopted a *Report and Order* to implement the mandatory broadcast signal carriage ("must-carry") provisions of the Cable Act.<sup>2</sup> On January 6, 1995, Maine Public Broadcasting Corporation ("MPBC"), licensee of Station W39BQ (Educ., Channel 39), Lewiston, Maine, filed a petition with the Commission claiming that United Video Cablevision, Inc. ("UVCI"), operator of cable television systems serving the communities of Greene, Leeds, Minot, Poland, Turner, Wales, Durham, and Woolwich, Maine had declined to carry the station.<sup>3</sup> In its petition, MPBC claims that UVCI declined to carry the station even though it is a "qualified noncommercial educational television station" entitled to carriage pursuant to §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). An opposition to this petition was filed February 13, 1995, on behalf of UVCI.

2. According to petitioner, TV translator station W39BQ is licensed to MPBC, a 501(c)(3) corporation operating noncommercial educational TV stations in the State of Maine. Station W39BQ translates the signal of full-power

noncommercial educational TV Station WMEA-TV (Educ., Channel 26), Biddeford, Maine, and operates with effective radiated power of 9.2 kilowatts.<sup>4</sup>

#### II. SUMMARY OF PLEADINGS

3. In support of its petition, MPBC indicates that despite previous correspondence regarding channel position and other issues, UVCI indicated on November 4, 1994 that it would not carry W39BQ because the station did not meet the criteria for must-carry rights of Low Power Television ("LPTV") stations. By letter dated November 9, 1994, MPBC explained to UVCI that it was no longer an LPTV station, but that effective February 22, 1994 it began operating as a TV translator station rebroadcasting Station WMEA-TV's PLUS Service, and, as such, is eligible for must-carry rights as a qualified noncommercial educational translator station.<sup>5</sup> Further, W39BQ maintains that it is entitled to carriage because it places a Grade B contour over respondent's principal headend.

4. In its opposition, UVCI states that MPBC's petition should be dismissed because UVCI is in full compliance with the Commission's must carry rules. UVCI does not dispute that W39BQ is currently operating as a translator station. Nevertheless, UVCI claims that W39BQ is not entitled to carriage in either Durham or Woolwich, Maine.<sup>6</sup> UVCI contends that its system serving Durham is already carrying the translator's parent station, WMEA-TV, and therefore UVCI does not also have to carry W39BQ on that system. Regarding Woolwich, UVCI argues that W39BQ does not provide a good quality or Grade B signal to the system headend which serves that community. UVCI states that it is providing to MPBC information regarding its technical tests of the translator signal which demonstrate that W39BQ is not a must-carry signal in Woolwich.<sup>7</sup>

#### III. DISCUSSION

5. Initially, it is important to note that noncommercial translator stations, such as W39BQ, have signal carriage rights.<sup>8</sup> Congress determined that translators should be carried because they are particularly important to state public television networks, like MPBC, in extending television signals to rural areas that are located far from the principal communities of the main station.<sup>9</sup> A review of the Commission's license file for W39BQ confirms that it is operating as a translator station. However, based on the totality of

<sup>1</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>2</sup> *Report and Order in MM Docket 92-259*, 8 FCC Rcd 2965 (1993). See also *Clarification Order*, 58 FR 32449 (June 10, 1993). 47 U.S.C. §535. Compare with *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 114 S. Ct. 2445 (1994) (remand of District Court opinion that must-carry provision of 1992 Cable Act is constitutional).

<sup>3</sup> In its response, UVCI states that it is proceeding to obtain the equipment necessary to enable it to receive and carry W39BQ in Greene, Leeds, Wales, Turner, Minot and Poland. UVCI states that it anticipates it will have all necessary equipment to add the station to these systems by the end of March, 1995. Therefore, regarding these communities, W39BQ's must-carry rights are not at issue.

<sup>4</sup> Petition at 2.

<sup>5</sup> MPBC explains that on November 30, 1993, the FCC granted MPBC authority to construct a new LPTV on Channel 39 in Lewiston, Maine. The station, W39BQ, commenced operations on December 30, 1993 as an LPTV station. In February 1994,

MPBC notified the FCC that W39BQ would operate as a TV Translator Station, rebroadcasting Station WMEA-TV's PLUS Service. MPBC's initial letter requesting carriage on UVCI's systems at issue here predated its switch to TV Translator status. See Petition at 2-4.

<sup>6</sup> UVCI's system which serves Durham also serves Freeport, Maine. However, MPBC's petition does not request carriage in Freeport. Response at 2.

<sup>7</sup> The record does not include a copy of these test results. See paragraph 6, *infra*, explaining that the coverage area of a translator station is its predicted protected contour.

<sup>8</sup> 47 U.S.C. §535(l)(1); 47 C.F.R. §76.55(a)(3)(i). See *Memorandum Opinion and Order in MM Docket 92-259*, 9 FCC Rcd 6723, 6724 (1994).

<sup>9</sup> See H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 104 (1992) (including translators in the definition of qualified noncommercial educational stations ensures carriage by cable systems in remote areas not served by the primary public television licensee).

evidence, we find that W39BQ is not a qualified *local* noncommercial educational translator station serving Durham and Woolwich, Maine, and, consequently, it is not entitled to carriage in the subject communities.

6. As stated previously, under the 1992 Cable Act and the Commission's must-carry rules, cable operators are required to carry the signals of qualified local NCE translator stations. For purposes of must-carry rights, a translator of any NCE station is considered a qualified local NCE station if the translator: (1) operates with five watts of power or higher; (2) serves the franchise area; and (3) delivers a good quality signal over the cable system's principal headend. Although W39BQ's petition states that it places a Grade B contour over UVCI's principal headend, this condition does not apply to translator stations. Because the service area of a translator differs from that of a full power broadcast station, the Commission has held that, for purposes of finding that a translator station serves a cable system's franchise area, the coverage area of such translator shall be its predicted *protected* contour as specified in §74.707 of the rules.<sup>10</sup>

7. Having concluded that the parties were applying an incorrect standard, we attempted to review the facts based on information from the Commission's files. The W39BQ transmitter is located at latitude 44° 09' 16" longitude 70° 00' 37", in Litchfield, Maine, and has a predicted protected contour calculated as specified in §74.707 that extends out approximately 16 miles from the transmitter. According to our calculations, Litchfield is 19 miles from Woolwich. Accordingly, it appears that W39BQ's predicted protected contour does not encompass Woolwich. With respect to Durham, Maine, we note that this community is more removed from W39BQ's location than Woolwich. Thus, we cannot find that W39BQ is local to the communities of Woolwich or Durham, Maine.<sup>11</sup> Accordingly, W39BQ is not a qualified local NCE translator station serving Woolwich or Durham, Maine, and thus it is not entitled to carriage in these communities.

#### IV. ORDER

8. Accordingly, IT IS ORDERED, pursuant to §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, that the petition filed January 6, 1995 by Maine Public Broadcasting Corporation IS DENIED.

9. This action is taken pursuant to authority delegated by section 0.321 of the Commission's Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

<sup>10</sup> 47 U.S.C. §535(l); 47 C.F.R. §76.55(a)(3)(1). See *Memorandum Opinion and Order*, 9 FCC Rcd at 6724.

<sup>11</sup> Given this conclusion we need not address UVCI's argument

that it is relieved from carrying W39BQ in Durham because it already carries W39BQ's parent station, WMEA-TV.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of the  
Mississippi Authority for  
Educational Television  
against Time Warner Cable

Application for Review

CSR-3745-M  
TN0063

#### MEMORANDUM OPINION AND ORDER

Adopted: June 10, 1994;

Released: June 29, 1994

By the Commission: Commissioners Ness and Chong not participating.

1. On July 8, 1993, an "Application for Review" of the decision in *Mississippi Authority for Educational Television against Time Warner Cable*, 8 FCC Rcd 3971 (1993), was filed by the Mississippi Authority for Educational Television ("MAET"), licensee of Station WMAV-TV (Educ., Channel 18), Oxford, Mississippi. Time Warner Cable ("TWC") filed an "Opposition To Application For Review" on July 23, 1993, and MAET replied to it on August 5, 1993.

2. In the underlying decision, the Bureau denied MAET's claim to mandatory carriage on TWC's Memphis, Tennessee cable system, finding that MAET was not eligible for such carriage under established criteria. Specifically, the Bureau determined that WMAV-TV did not place a Grade B signal contour over the cable system's principal headend nor was the station's reference point within fifty miles of that headend. In its request for review, MAET notes that the cable system's principal headend in Memphis, Tennessee is "... just barely (1.529 miles) beyond Station WMAV-TV's Grade B contour and the 50-mile rule applicable to Station WMAV-TV." MAET adds that §73 - 63 - 1 of the Mississippi Code of 1972 gives it the responsibility for administering, operating, controlling, and supervising, educational radio and television in that state. Therefore, MAET argues, it must have carriage on the cable system serving Memphis to reach subscribers in northwest Mississippi. According to MAET, the cable system's designation of the Memphis headend as its principal one effectively frustrates MAET's statutory mandate from the State of Mississippi, and it is contrary to the public interest policy inherent in the broad dissemination of noncommercial educational programming. MAET also claims that this headend designation was meant to circumvent the system's mandatory carriage obligations, and it urges the Commission to reverse the Bureau's initial decision expeditiously, citing the *Report and Order in M.M. Docket No. 92-259*, 8 FCC Rcd 2965, 2968 (1993).

3. In response, TWC notes that, of the five headends which the Memphis cable system might have designated as its principal one, the one so chosen was in fact the closest to WMAV-TV's reference point, and that each of the others was also beyond WMAV-TV's Grade B contour and more than fifty miles from its reference point. According to TWC, its system has four headends at Whitehaven, Union Extension, Raleigh, and Agricenter, which are 55.870, 58.965, 62.239, and 54.918 miles from WMAV-TV's reference point, respectively. In addition to housing the master control center, the Memphis headend also contains most of the system's signal processing equipment and is the source of all the system's programming. TWC states that choosing Memphis as its principal headend is fully consistent with Commission guidelines, and it asks that MAET's application be denied as meritless.

4. In reply, MAET reiterates its prior assertions, adding that it is not in the public interest to permit a Tennessee cable system that serves areas in Mississippi to specify only headend locations that are outside Mississippi and beyond the Grade B contours as well as more than fifty miles from the applicable reference points of Mississippi public television stations.

5. When the Commission adopted its *Report and Order in M.M. Docket No. 92-259*, *supra*, it enumerated certain factors it intended to consider when evaluating a complaint from a noncommercial educational station concerning a cable system's designation of its principal headend. The Commission noted that a cable operator would bear a "significant burden in demonstrating the reasonableness" of its headend designation if the site chosen did not serve the majority of its subscribers, or did not have the majority of the system's signal processing equipment, or were not the closest to the geographic center of the cable system. In this instance, TWC's choice satisfies one of these factors: it has the majority of the system's signal processing equipment. MAET has not substantiated its allegation that TWC abused its discretion by not selecting an alternate location consistent with Commission guidelines where WMAV-TV would be entitled to mandatory carriage,<sup>1</sup> nor has MAET specified the possible location of any such alternate site. Indeed, it appears from the record before us that TWC in fact chose the site that was the closest to WMAV-TV of all of TWC's headends.

6. In view of the foregoing, we find that grant of MAET's application for review is not in the public interest.

7. Accordingly, IT IS ORDERED, That the "Application for Review" (CSR-3745), filed July 8, 1993, by the Mississippi Authority for Educational Television IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary

<sup>1</sup> We also note that TWC previously indicated that it already carries Station WKNO-TV (Channel 10), a noncommercial educational station licensed to Memphis, Tennessee, which is en-

titled to carriage on the cable system under the must-carry rules.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of the University  
of Illinois Board of Trustees  
against TCI of Illinois-Onarga

CSR-3792

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 1993;

Released: June 14, 1993

By the Chief, Mass Media Bureau:

1. On February 26, 1993, a complaint was filed with the Commission on behalf of the University of Illinois Board of Trustees, licensee of Station WILL-TV, (Educ., Channel 12), Urbana, Illinois. According to WILL-TV the station is entitled to on-channel carriage by cable television systems serving the following Illinois communities, all of which are owned by TCI of Illinois-Onarga, because WILL-TV's Grade B contour encompasses the principal headend of the cable system serving each of them, and therefore WILL-TV is a "local" signal for each of these areas within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992): Onarga, Danforth, and Gilman.

2. On April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving *Turner Broadcasting System, Inc., et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. April 8, 1993), which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and which terminated the 120 day *Standstill Order* previously issued in this case.

3. Since no other pleadings were filed in this matter within the fifteen (15) day period specified by the Commission in its Public Notice, Mimeo No. 32419 (released March 26, 1993), the complaint filed February 26, 1993, by the University of Illinois Board of Trustees IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI of Illinois-Onarga IS ORDERED to commence on-channel carriage of Station WILL-TV, Channel 12, Urbana, Illinois, on its cable television systems in Onarga, Danforth, and Gilman, Illinois, ~~forty-six (46) days from the date of this Order.~~ This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Michigan State  
University against Crystal Cable  
TV, Inc.

CSR-4011-M  
MI1364

Petition for Reconsideration

# MEMORANDUM OPINION AND ORDER

Adopted: December 14, 1994; Released: December 27, 1994

By the Cable Services Bureau:

1. On May 25, 1994, Crystal Cable TV, Inc. ("Crystal"), operator of a cable system serving Crystal, Michigan, filed a letter with the Commission which we will treat as a petition for reconsideration. Crystal, in essence, requests that the Commission reconsider its December 15, 1993 action<sup>1</sup> ordering its Crystal, Michigan system to carry Station WKAR-TV (Educ., Ch. 23), East Lansing, Michigan. No opposition to this petition has been received.

2. In support of its request, Crystal states that it remeasured WKAR-TV's signal on May 25, 1994. It avers that this data indicates that WKAR-TV's signal strength was measured at -88 dBm, substantially below the level of -45 dBm required for mandatory carriage of UHF stations. In addition, Crystal submits a videotape of programming from WKAR-TV received on May 24 and 26, 1993, which substantiates the station's poor reception. Finally, Crystal maintains that since it already carries Station WCMU-TV (Educ., Ch. 14), Mt. Pleasant, Michigan, it shouldn't be required to carry another NCE station.

3. We are not persuaded by the arguments raised by Crystal. Section 615(g)(4) of the Communications Act of 1934, as amended, states that "a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission." 47 U.S.C. 535(G)(4). Because the cable operator is in the best position to know whether a given NCE station is providing a good quality signal to the system's principal headend, we believe the initial burden of demonstrating the lack of a good quality signal appropriately falls on the cable operator. In meeting this burden, the cable operator must show that it has used good engineering practices, as defined below, to measure the signal delivered to the headend.

4. As stated in footnote 2 of our original Order, with respect to the standard to be used to determine what constitutes a "good quality" signal, we note that the Cable

Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992) failed to set a standard for either VHF or UHF noncommercial stations. However, the 1992 Cable Act did adopt a standard for determining the availability of VHF and UHF commercial stations at a cable system's headend. To establish the availability of a VHF commercial station's signal, the 1992 Cable Act set out a standard of -49 dBm at a cable system's headend. At standard of -45 dBm was established for UHF commercial station signals. Consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as *prima facie* tests to initially determine, absent other evidence, whether VHF or UHF noncommercial stations place adequate signal levels over a cable system's principal headend.

5. In this instance, Crystal determined WKAR-TV's signal strength to be below the requisite level for a UHF commercial station. We find, however, that the cable system failed to follow generally acceptable engineering practices in making its determination. Generally, if the test results are less than -51 dBm for a UHF station, we believe that at least four readings must be taken over a two-hour period. Where the initial readings are between -51 dBm and -45 dBm, inclusive, we believe that the readings should be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results.

6. In addition to the information required by our rules to be furnished to the affected station when there is a dispute over signal level measurements, cable operators are expected to employ sound engineering measurement practices. Therefore, signal strength surveys should, at a minimum, include the following: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were done. The underlying decision specifically cited these measurement requirements so that Crystal was specifically on notice as to their applicability. When measured against these criteria, we conclude that the test submitted by Crystal is insufficient to demonstrate that WKAR-TV's signal is not of "good quality" at the cable system's headend.

7. Further, we will generally not consider photographs, photographs of a video tape, or the video tape itself to establish the presence or absence of a good quality signal or must-carry purposes. We believe the videotaping, video playback equipment, television receiver as well as photographic equipment used may interject impairments (e.g., noise, equipment characteristics, color integration, etc.) which could make it difficult to judge whether the videotape or photograph accurately represents the station signal. Consequently, we will only consider such evidence as a supporting factor to properly performed engineering measurements.

8. Finally, §76.56(a)(1)(iii) of our rules requires that all cable systems with more than 36 channels, such as Crystal,<sup>2</sup> must carry a *minimum* of three NCE channels, but it does not preclude requiring such a system to carry additional

<sup>1</sup> *Michigan State University against Crystal Cable TV, Inc.*, 9 FCC Rcd 498 (1993).

<sup>2</sup> Commission records indicate that Crystal has a channel capacity of at least 40 channels.

NCE channels. Indeed, the *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993) specifically states: "[s]ystems with a capacity of more than 36 usable activated channels are *generally required* to carry the signals of *all* qualified local NCE stations requesting carriage" (emphasis supplied). The only exception to this requirement is when there is substantial programming duplication between local NCE stations, a circumstance not raised herein.

9. Accordingly, pursuant to §§0.321 and 1.106 of the Commission's Rules, the petition for reconsideration, filed May 25, 1994, IS DENIED and Crystal Cable TV, Inc. IS ORDERED to commence carriage of Station WKAR-TV within forty-five (45) days of the date of this Order. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

AUG 26 1993

IN REPLY REFER TO:  
4410-AG

Steven K. Meuche, General Manager  
Station WKAR-TV, M.S.U.  
212 Communications Arts Bldg.  
East Lansing, MI 48824-1212

In re: Station WKAR-TV  
CSR-4020-M

Dear Mr. Meuche:

By letter dated August 16, 1993, you asked the Commission to dismiss the unopposed complaint dated August 2, 1993, that you filed on behalf of Station WKAR-TV (Educ., Channel 23), East Lansing, Michigan, against TCI Cablevision, operator of a cable television system serving Battle Creek, Michigan.

Accordingly, pursuant to §§0.283 and 76.8(a) of the Commission's Rules, the above complaint is dismissed.

Sincerely,



Ronald Parver  
Chief, Cable Television Branch  
Video Services Division  
Mass Media Bureau

## Federal Communications Commission

DA 93-878

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Northeastern  
Educational Television of Ohio,  
against TCI Cablevision of Ohio

CSR-3882-M  
OH0145

Request for Carriage

## MEMORANDUM OPINION AND ORDER

Adopted: August 4, 1993;

Released: August 12, 1993

By the Chief, Mass Media Bureau:

1. On July 2, 1993, a petition on behalf of Northeastern Educational Television of Ohio, licensee of Television Broadcast Station WNEO (Educ., Ch. 45), Alliance, Ohio, was filed with the Commission claiming that TCI Cablevision of Ohio ("TCI"), operator of a cable system serving Steubenville, Ohio, had declined to carry the station, even though the Grade B contour of WNEO encompasses the system's principal headend at north latitude 40° 20' 48" and west longitude 80° 39' 37" in Steubenville, Ohio, and the reference point for Alliance is also within fifty miles of TCI's headend. WNEO asserts that it is thus a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), and that it is entitled to mandatory carriage on the TCI system.

2. TCI's only response to WNEO's carriage request was a May 21, 1993 letter detailing its current channel line-up and designating those channels it considers to be must-carry for its Steubenville system. Since this line-up does not include its station, WNEO concludes that this letter constitutes TCI's denial of carriage. WNEO continues, however, that since this same letter indicates that TCI has at least 37 currently-activated channels, TCI is required to carry any and all qualified NCE stations that request carriage, pursuant to Section 5(b)(1) of the 1992 Cable Act. TCI has not filed a response to WNEO's must-carry petition.

3. We agree with WNEO's argument. Section 76.56(a)(iii) of the Commission's Rules requires that all cable systems with more than 36 channels must carry a minimum of three NCE channels, but it does not preclude requiring such a system to carry additional NCE channels. Indeed, paragraph 11 of the *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2966, 2968 (1993), specifically states: "[s]ystems with a capacity of more than 36 usable activated channels are generally required to carry the signals of all qualified local NCE stations requesting carriage" (emphasis supplied). The only exception to this requirement is when there is substantial programming duplication between local NCE stations, a circumstance not at issue here.

4. In light of the foregoing, therefore, the complaint filed July 2, 1993 by Northeastern Educational Television of Ohio, Inc. IS GRANTED in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Ohio IS ORDERED to commence carriage of Station WNEO forty-six (46) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Southwest Indiana  
Public Broadcasting, Inc. against  
Douglas Cable Communications

CSR-3969-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 2, 1993, a petition on behalf of Southwest Indiana Public Broadcasting, Inc., licensee of Television Broadcast Station WNIN (Educ., Ch. 9), Evansville, Indiana, was filed with the Commission claiming that Douglas Cable Communications ("Douglas"), operator of cable television systems serving the communities of Allendale, Bone Gap, Browns, Keensburg and West Salem, Illinois, had declined to carry the station, even though the Grade B contour of WNIN encompasses the systems' principal headends at Allendale, Bone Gap, Browns, Keensburg and West Salem and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WNIN requests that the Commission not only order Douglas to carry its signal on each of these cable systems, but also order that the systems carry it on Channel 9, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WNIN's petition establishes that it is entitled to carriage on the Allendale, Bone Gap, Browns, Keensburg and West Salem cable systems, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 2, 1993, by Southwest Indiana Public Broadcasting, Inc. IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Douglas Cable Communications IS ORDERED to commence carriage of WNIN on cable channel 9 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

*Work file*

WILEY, REIN & FIELDING

1776 K STREET, N.W.  
WASHINGTON, D. C. 20006  
(202) 429-7000

RECEIVED

AUG 26 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RICHARD J. BODORFF  
(202) 828-3145

August 26, 1993

FACSIMILE  
(202) 429-7049  
TELEX 248349 WYRN UR

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: / Central Virginia Educational Telecommunications  
Corporation v. Cable TV Montgomery  
CSR-3757 and CSR-3758

Dear Mr. Caton:

*McCool*

This is to advise you that the issues raised in the above-referenced petitions for special relief have been settled among the parties. The settlement contemplates that the parties will withdraw all pleadings filed in this proceeding within seven (7) days after carriage of WNVC(TV), Fairfax, Virginia, commences on Cable TV Montgomery's (CTM) cable system in Montgomery County, Maryland. Carriage commenced on August 25, 1993.

The purpose of this letter is to request that all pleadings filed by Central Virginia Telecommunications Corporation ("CVETC"), licensee of WNVC(TV), in this proceeding be returned without action. CVETC understands that CTM will separately request return of its pleadings.

Respectfully submitted,

*[Signature]*  
Richard J. Bodorff

RJB/lar  
cc: Barrett Brick (via hand delivery)  
Howard Shapiro, Esq. (via facsimile)

## Federal Communications Commission

DA 93-613

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Central  
Virginia Educational  
Telecommunications  
Corporation against  
Prestige Cable TV, Inc.

CSR-3759

Request for Carriage

with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Prestige Cable TV, Inc. IS ORDERED to commence carriage of WNVC, forty-six (46) days from the date of this Order on its cable television system serving Stafford County, Virginia. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

MEMORANDUM OPINION AND ORDER

Adopted: May 28, 1993;

Released: June 8, 1993

By the Chief, Mass Media Bureau:

1. On January 28, 1993, a petition on behalf of the ~~Central Virginia Educational Telecommunications Corporation~~, licensee of Television Broadcast Station ~~WNVC~~ (Educ. Ch. 56), Fairfax, Virginia, was filed with the Commission claiming that Prestige Cable TV, Inc. ("Prestige") had declined to carry the station, even though ~~the Grade B contour of WNVC encompasses the system's principal headend at Garrisonville, Virginia, and it is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).~~

2. Prestige filed an opposition to this petition on February 25, 1993, noting the outstanding *Standstill Order* and the pending litigation involving the constitutionality of the 1992 Cable Act in *Turner Broadcasting System, Inc. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992), and stating its belief that the court might invalidate the Act, but that if not, Prestige already carries the following noncommercial stations, which may substantially duplicate WNVC's programming: WETA-TV (Educ., Channel 26), Washington, DC.; WHMM (Educ., Channel 32), Washington, DC.; and WNVY (Educ., Channel 53), Goldvein, Virginia. Therefore, Prestige sought ~~an extension of time until May 13, 1993, to evaluate the programming schedules of the above stations in light of the Commission's Report and Order in MM Docket No. 92-259, FCC 93-144, FCC Rcd (1993), in order to determine whether or not it should further supplement its initial opposition.~~

3. On April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving *Turner Broadcasting System, Inc., supra*, which upheld the provisions of the 1992 Cable Act rights and terminated the 120 day *Standstill Order* previously issued in this case.

4. Given the passage of time, and having received no additional pleadings in this matter by May 13, 1993, from Prestige substantiating its initial supposition of potential program duplication by WNVC, the petition filed January 28, 1993, by the Central Virginia Educational Telecommunications Corporation IS GRANTED, in accordance

## Federal Communications Commission

DA 93-645

Before the  
Federal Communications Commission  
Washington, D.C. 20554

action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

In re:

Complaint of Central Virginia                      CSR-3755  
Educational Telecommunications  
Corporation against  
Multivision Cable TV

Roy J. Stewart  
Chief, Mass Media Bureau

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 1993;

Released: June 14, 1993

By the Chief, Mass Media Bureau:

1. On December 4, 1992, the mandatory carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), became effective for certain noncommercial education stations. On January 28, 1993, the Central Virginia Educational Telecommunications Corporation, licensee of Television Broadcast Station WNVN (Educ., Channel 53), Goldvein, Virginia, filed a complaint against Multivision Cable TV ("Multivision"), operator of a cable television system serving Prince George's County, Maryland. According to WNVN, the station's Grade B contour encompasses Multivision's principal headend at Lanham, Maryland, and WNVN, therefore, is entitled to carriage as a "local" signal within the meaning of §5(1)(2) of the 1992 Cable Act.

2. By letter dated December 8, 1992, Multivision declined to carry WNVN on its system, pending resolution of the *Standstill Order* and of the litigation addressing the constitutionality of the Cable Act in *Turner Broadcasting System, Inc., et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992), but stated that it would do so, if it was required to, after the above issues were resolved.

3. The *Standstill Order* deferred any Commission action regarding educational television stations' complaints of noncarriage for 120 days, or until an appealable order of the court was entered. However, it did not preclude the filing of complaints regarding carriage disputes or delay the schedule for the filing of responsive pleadings. On April 8, 1993, the Court issued its opinion in this case upholding the provisions of the 1992 Cable Act and terminating the *Standstill Order*.

4. Since no other pleadings were filed in this matter within the fifteen (15) day period specified by the Commission in its Public Notice, Mimeo No. 32419 (released March 26, 1993), the complaint filed January 28, 1993, by the Central Virginia Educational Telecommunications Corporation IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Multivision Cable TV IS ORDERED to commence carriage of Station WNVN, Channel 53, Goldvein, Virginia, on its cable system serving Prince George's County, Maryland, forty-six (46) days from the date of this Order. This

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Central Virginia  
Educational Telecommunications  
Corporation against  
MetroVision of Prince George's  
County, Inc. CSR-3756

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 1993;

Released: June 14, 1993

By the Chief, Mass Media Bureau:

1. On December 4, 1992, the mandatory carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), became effective for certain noncommercial education stations. On January 28, 1993, the Central Virginia Educational Telecommunications Corporation, licensee of Television Broadcast Station WNVT (Educ., Channel 53), Goldvein, Virginia, filed a complaint against MetroVision of Prince George's County, Inc. ("MetroVision"), operator of a cable television system serving portions of Prince George's County, Maryland. According to WNVT, the station's Grade B contour encompasses MetroVision's principal headend at Landover, Maryland, and WNVT, therefore, is entitled to carriage as a "local" signal within the meaning of §5(1)(2) of the 1992 Cable Act.

2. On March 15, 1993, MetroVision filed an *Opposition* to WNVT's complaint which it supplemented on April 13, 1993, noting that it carried WNVT until January 1992, when it terminated WNVT's carriage because of a significant number of subscriber complaints due to poor signal quality. Citing §4(h)(1)(B)(iii) of the 1992 Cable Act, MetroVision notes that a commercial UHF broadcast station cannot mandate carriage by a local cable system unless it delivers a signal level of -45 dBm at the input terminals of the system's principal headend. According to measurements performed on February 25, 1993, at MetroVision's headend in Capitol Heights, Maryland, using generally accepted engineering practices and equipment, WNVT's signal varied between -61.75 dBm and -61.35 dBm.<sup>1</sup> According to MetroVision, there is a large hill between its headend and WNVT's transmit site, and the cable system had invited WNVT's technical personnel to take signal strength measurements at its headend in 1991, which they did, so the station has been aware of this situation for quite some time. Moreover, Roger Wells, MetroVision's Vice

President and Regional Manager, once again discussed the problem with an employee of WNVT following the station's present request for carriage and suggested their engineer contact MetroVision's to resolve it, but no subsequent discussions were ever initiated to MetroVision's knowledge. Finally, MetroVision notes the *Standstill Order* and the pending litigation addressing the constitutionality of the 1992 Cable Act in *Turner Broadcasting System, Inc., et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. December 4, 1992), and argues that §5 of the 1992 Cable Act violates the system's rights guaranteed by the First Amendment and by the Fifth Amendment to the United States Constitution.

3. A decision upholding the constitutionality of the 1992 Cable Act and terminating the *Standstill Order* was issued April 8, 1993, by the United States District Court of the District of Columbia in *Turner Broadcasting System, Inc., supra*. However, ~~staff review of the engineering data submitted by MetroVision demonstrates that WNVT fails to provide a good quality signal at MetroVision's headend, as mandated by §615(g)(4) of the 1992 Cable Act. Therefore, WNVT is not entitled to mandatory carriage on the cable television system operated by MetroVision of Prince George's County, Inc., and the petition filed January 28, 1993, by the Central Virginia Educational Telecommunications Corporation IS DISMISSED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.~~

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

<sup>1</sup> In this particular case, MetroVision utilized 120 feet of CommScope 500 copper-clad, center-conductor cable, a ten-year old antenna (Model #OCA-UHF) located at the eighty foot level of a tower at the headend, and a Tektronix 2714 system

analyzer, last calibrated in December 1992. The measurements were made in overcast weather with temperatures in the thirties at two hour intervals between 8:00 am and Midnight.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

## In re:

Complaint of Central Virginia	CSR-3760
Educational Telecommunications	CSR-3761
Corporation against District	DC0002
Cablevision Limited Partnership	

## Request for Carriage

## MEMORANDUM OPINION AND ORDER

Adopted: July 29, 1993;

Released: August 6, 1993

By the Chief, Mass Media Bureau:

1. On January 28, 1993, petitions on behalf of Central Virginia Educational Telecommunications Corporation (hereinafter "Central"), licensee of Television Broadcast Stations WNVN (Educ., Ch. 53), Goldvein, Virginia, and WNVN (Educ., Ch. 56), Fairfax, Virginia, were filed with the Commission claiming that District Cablevision Limited Partnership ("District") had declined to carry the stations, even though each station places a Grade B contour over the system's principal headend in Washington, D.C., and the stations are therefore "local" signals within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

2. On April 13, 1993, District filed an opposition to this petition,<sup>1</sup> in which it argues that, regardless of whether or not WNVN and WNVN are qualified local NCE stations, its system, which has more than 36 usable activated channels, is currently carrying the following three qualified NCE stations pursuant to the provisions of Section 76.56(a)(iii) of the Commission's Rules: WMPT (Educ., Ch. 22), Annapolis, Maryland, and WETA-TV (Educ., Ch. 26) and WHMM (Educ., Ch. 32), both Washington, D.C. It concludes, therefore, that since it is already meeting its NCE carriage obligations, it is not required to add WNVN and

WNVN to its system. In addition, District avers that Central's petition is deficient in that the "Declaration" attached to its petition does not conform with Commission requirements.

3. In its reply to the opposition, filed May 19, 1993,<sup>2</sup> Central states that no "quota" exists for the number of NCE stations required to be carried under the 1992 Cable Act, and it cites paragraph 11 of the *Report and Order in MM Docket No. 92-259 (Must-Carry Order)*, 8 FCC Rcd 2965 (1993), to support its contention that District, as a system with more than 36 channels, is required to carry any local NCE station that requests carriage, except those stations that substantially duplicate a currently-carried station. Central submits copies of its program schedules for February, March and April even though District does not argue that either WNVN or WNVN duplicates existing programming. Central contends that District thus is required to add these two signals as must-carry stations. Additionally, in order to satisfy District's objection to its original "Declaration", Central submits an amended "Declaration" with its reply.

4. District cites Section 76.56(a)(1)(iii) of the Commission's Rules<sup>3</sup> as its basis for not having to carry WNVN and WNVN, and it opposes the acceptance of Central's reply due to its late filing. It argues that the Commission's *Public Notice*, No. 32419,<sup>4</sup> clearly indicates that Central should have filed its reply no later than April 26, 1993. District contends that Central's statement that it was "overwhelmed" with work does not excuse its failure to comply with the deadline.

5. District's reliance on Section 76.56(a)(1)(iii) of our rules to avoid carriage of WNVN and WNVN is in error. Section 76.56(a)(1)(iii) requires that all cable systems with more than 36 channels must carry a *minimum* of three NCE channels, but it does not preclude requiring such a system to carry additional NCE channels. Indeed, the *Must-Carry Order* specifically states: "[s]ystems with a capacity of more than 36 usable activated channels are generally required to carry the signals of all qualified local NCE stations requesting carriage" (emphasis supplied).<sup>5</sup> The only exception to this requirement is when there is substantial programming duplication between local NCE stations, a circumstance not present here. With regard to the issue of late filing, we note that both Central's reply and District's opposition<sup>6</sup> appear to have been late filed. Although we admonish the parties for having failed to meet our filing requirements, we will accept both late-filed pleadings out of our interest in resolving this case on a complete record.

<sup>1</sup> An Erratum to this opposition was filed on April 14, 1993.

<sup>2</sup> Petitioner filed a concurrent motion to file its reply out of time.

<sup>3</sup> Section 76.56(a)(iii) states in pertinent part:

"Systems with more than 36 usable activated channels shall be required to carry the signals of three qualified local NCE educational television stations; however a cable system with more than 36 channels shall not be required to carry stations whose programming substantially duplicates the programming of another qualified local NCE station."

<sup>4</sup> The Commission adopted its *Must-Carry Order*, 8 FCC Rcd 2965 (1993), on March 11, 1993. In view of the fact that the rules adopted therein could have an impact upon a cable system's obligation to carry certain noncommercial educational

stations, and could also affect the resolution of a disputed carriage request already on file with the Commission, parties opposing such requests on file were permitted 15 days to file a supplemental pleading after the release date of the *Must-Carry Order*, *supra*. Public Notice, "Carriage of Noncommercial Educational Stations by Cable Television Systems," Mimeo No. 32419 (released March 26, 1993). Replies to such supplemental oppositions could be filed within 5 days. *Id.*

<sup>5</sup> *Must-Carry Order*, 8 FCC Rcd at 2968.

<sup>6</sup> The Commission's March 23 Public Notice specifically stated that supplemental oppositions were to be allowed an additional 15 days to be filed, not the original opposition. District's original opposition was not filed until April 13, 1993; the thirty day response time from the date of filing of Central's petition would have expired on March 1, 1993.

6. In light of the foregoing, therefore, the complaints filed January 29, 1993, by Central Virginia Educational Telecommunications Corporation ARE GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and District Cablevision Limited Partnership IS ORDERED to commence carriage of Stations WNVT and WNVC forty-six (46) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

**FEDERAL COMMUNICATIONS COMMISSION**

**Roy J. Stewart**  
Chief, Mass Media Bureau

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WNYC

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

DA-93-589

In re:

Complaint of WNYC  
Communications Group against  
Time Warner New York City  
Cable Group

CSR-3748

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: May 20, 1993

Released: May 21, 1993

By the Chief, Mass Media Bureau:

INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 ["the Cable Act"] became law.<sup>1</sup> On December 4, 1992, the Cable Act's requirements for mandatory carriage of certain noncommercial educational stations became effective.<sup>2</sup> On January 19, 1993, WNYC Communications Group ["WNYC-TV"], licensee of Station WNYC-TV (Educ., Channel 31), New York, New York, filed a complaint seeking to ensure the station's continued carriage on channel 3 on the cable systems serving the Borough of Manhattan in New York City that are operated by Time Warner New York City Cable Group ["Time Warner"]. Time Warner opposed this complaint on February 18, 1993, and WNYC-TV replied on March 5, 1993.

<sup>1</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>2</sup> 47 U.S.C. §535.

<sup>3</sup> On March 11, 1993, the Commission adopted a Report and Order in MM Docket No. 92-259, 8 FCC Rcd 2965 (1993) ["Report and Order"]. In view of the fact that the rules adopted therein could have an impact upon a cable system's obligation to carry certain noncommercial educational stations, and could also affect the resolution of a disputed carriage request already on file with the Commission, parties opposing such requests on file were permitted 15 days to file a supplemental pleading after the release date of the Report and Order, *supra*. Public Notice, "Carriage of Noncommercial Educational Stations by Cable Television Systems," Mimeo No. 32419 (released March 26, 1993). Replies to such supplemental oppositions could be filed within 5 days. *Id.* Time

### SUMMARY OF PLEADINGS

2. WNYC-TV complains that, despite its status as a qualified local noncommercial educational television station entitled to on channel carriage rights on channel 3 on Time Warner's Manhattan cable systems, Time Warner has repositioned WNYC to channel 31. This, states WNYC-TV, is contrary to the station's wishes and, therefore, is a violation of WNYC-TV's rights under the Cable Act and the Commission's implementing rules. WNYC-TV notes that Congress has recognized that channel shifting is disruptive to viewers and harmful to local stations, citing H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 54-55, 71 (1992) and S.Rep. No. 102-92, 102d Cong. 1st Sess. 44 (1991), and urges swift Commission action.

3. In opposition, Time Warner argues that its repositioning of WNYC-TV from channel 3 to channel 31, the channel on which WNYC-TV is licensed to operate, will in fact be beneficial to the station and to its viewers. WNYC-TV is carried on channel 31 on Time Warner's cable systems serving other New York City boroughs, notes Time Warner, and the station promotes itself as "WNYCTV 31." WNYC-TV's carriage on cable channel 3 in Manhattan is a historic accident, contends Time Warner, for at the time the Manhattan systems were originally constructed in the 1960s, they did not have 31 channels.

4. In its supplemental opposition filed April 13, 1993, Time Warner contends that WNYC-TV is not in fact entitled to mandatory carriage and channel positioning rights. Time Warner argues that WNYC-TV, as a station owned and operated by the City of New York, must transmit "predominantly noncommercial programs for educational purposes" in order to possess such rights, citing 47 U.S.C. §535(1)(1)(B). This has been defined by the Commission, Time Warner notes, as transmitting such programs, as defined in §73.521 of the Commission's Rules, for at least 50 percent of the station's broadcast week. 47 C.F.R. §76.55(a)(2). See also Report and Order at \_\_\_\_\_. Citing Way of the Cross of Utah, Inc., 101 FCC 2d 1368 (1985), Time Warner further argues that §73.621 of the Rules distinguishes between instructional and general educational programming on the one hand, and cultural and entertainment programming on the other. A qualified

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Warner supplemented its opposition on April 13, 1993. WNYC-TV replied on April 23, 1993.

4 In reply, WNYC-TV states that Time Warner has repositioned WNYC-TV, and urges immediate Commission action.

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noncommercial educational station may transmit the latter programming, Time Warner notes, but must transmit predominantly the former programming. This, Time Warner claims, WNYC-TV fails to do, and Time Warner submits a copy of WNYC-TV's program schedule for the week of April 5-11, 1993, in support of this argument. Time Warner maintains that the Commission possesses broad dispute resolution authority which it should use to hold that uniform carriage of WNYC-TV on cable channel 31 throughout New York City best serves the public interest.

5. In reply, WNYC-TV argues that instructional, educational, cultural, and entertainment categories as used in §73.621(c) of the Rules are overlapping categories, not exclusive categories, and are not in any event designed to limit the carriage rights of licensed stations. In fact, notes WNYC-TV, Congress specifically cited the station as an example of a qualified noncommercial educational television station for purposes of carriage and channel position rights in the Cable Act's legislative history, citing H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 104 (1992). WNYC-TV further notes that repositioning it will not achieve uniform positioning city-wide, as systems not owned by Time Warner carry WNYC-TV on channel 49. Such repositioning, claims WNYC-TV, will only confuse its viewers and allow Time Warner to place Turner Network TV, a service in which Time Warner's corporate parent and its affiliates have an ownership interest, on channel 3 on Time Warner's systems.

#### DISCUSSION

6. We uphold WNYC-TV's complaint against Time Warner. Section 515(g)(5) of the Cable Act, as implemented by §76.57(b) of the Commission's Rules, requires that the signals of noncommercial educational broadcast stations carried on a cable television system pursuant to the must-carry requirements must appear on the cable system channel number on which the qualified local noncommercial educational station is broadcast over the air or on the channel in which it was carried on July 19, 1985, at the election of the noncommercial educational station. WNYC-TV was carried on the Time Warner systems serving the Borough of Manhattan on cable channel 3 on July 19, 1985 and the station has elected to continue to be carried on that channel. Notwithstanding Time Warner's assertions of the beneficial impact of repositioning WNYC-TV on those cable systems, the decision as to cable channel position rests with WNYC-TV.

7. Time Warner's arguments challenging WNYC-TV's rights to carriage are not persuasive. WNYC-TV is clearly a qualified noncommercial educational television station within the meaning of the Cable Act and our rules. As required by 47 U.S.C. §535 to be eligible for mandatory carriage, WNYC-TV's city of license is

within 50 miles of Time Warner's principal headend.<sup>5</sup> WNYC-TV is "owned and operated by a municipality" -- WNYC Communications Group is an agency in the Department of General Services of the City of New York -- and WNYC-TV "transmits predominantly noncommercial programs for educational purposes." This is defined by our rules to be "as defined in §73.621 of this chapter, for at least 50 percent of its broadcast week." 47 C.F.R. §76.55(a)(2). While Time Warner would limit the definition of "educational" to instructional and related educational programming, the Commission clearly stated in the Report and Order, supra, that "the Notice did not intend to limit the scope of 'educational purposes' only to the requirements of paragraph (a) of §73.621, but intended that all of §73.621 would be governed by that definition." Report and Order at n.7. For purposes of this portion of the Cable Act and the Commission's implementing rules, a broad, inclusive definition of "noncommercial programs for educational purposes" is appropriate and has been adopted.<sup>6</sup> Not only has WNYC-TV demonstrated that it qualifies as a local noncommercial educational television station, but also Congress has specifically identified WNYC-TV as an example of a qualified noncommercial educational television station for purposes of 47 U.S.C. §535. See H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 104 (1992).

8. In view of the foregoing, we find that grant of WNYC-TV's petition is in the public interest.

9. Accordingly, IT IS ORDERED, That the petition for special relief (CSR-3748) filed January 19, 1993, by WNYC Communications Group IS GRANTED in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended.

10. IT IS FURTHER ORDERED, That Time Warner New York City Cable Group SHALL CARRY the signal of WNYC-TV on cable channel 3 of Time Warner's cable systems serving the Borough of Manhattan

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<sup>5</sup> WNYC-TV's Grade B service contour also encompasses Time Warner's principal headend, an alternative qualifying criterion. 47 U.S.C. §535(1)(2)(B).

<sup>6</sup> As the Commission has previously stated, "As in all matters relating to programming, we will defer to the judgement of the broadcaster unless his categorization appears to be arbitrary or unreasonable." Way of the Cross of Utah, Inc., 101 FCC 2d at 1372 n. 5, citing Notice of Inquiry in Docket No. 78-164, 43 Fed. Reg. 30847, 30844-45 (1978).

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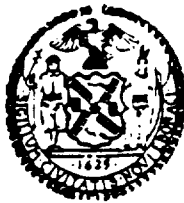
P.6

within forty-five (45) days of the release date of this Order.  
This action is taken by the Chief, Mass Media Bureau, pursuant to  
authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATION COMMISSION

  
Roy J. Stewart  
Chief, Mass Media Bureau

*The  
City of  
New York*



LAW DEPARTMENT

100 CHURCH STREET  
NEW YORK, N.Y. 10007

Room 328L  
O. PETER SHERWOOD  
Corporation Counsel

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MAR 31 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 31, 1993

HAND DELIVERY

Ms. Donna Searcy  
Secretary  
Federal Communications Commission  
1919 M Street N.W., Room 222  
Washington, D.C. 20554

Re: Complaint of WNYC  
Communications Group Against  
Cablevision Systems  
Corporation, CSR 3787

Dear Ms. Searcy:

Together with the law firm of Arnold & Porter, we represent WNYC Communications Group ("WNYC"), complainant in the referenced matter. Pursuant to the Rules of the Federal Communications Commission, 47 C.F.R. § 76.8, as applicable to the referenced complaint, see F.C.C. News Release (March 11, 1993) (Rules Implementing Must-Carry and Retransmission Consent Provisions of 1992 Cable Act Adopted (MM Docket 92-259)), WNYC dismisses without prejudice as of right its "Complaint re Failure to Comply with Section 615 of the Communications Act" (filed March 3, 1993) against Cablevision Systems Corporation and/or subdivisions and affiliates ("Cablevision").

The complaint, and accompanying "Petition for Emergency Declaratory Relief" (which is also dismissed herewith), arose out of a dispute between WNYC, licensee of WNYC-TV, Channel 31, New York City, and Cablevision, operator of cable systems in (among other locations) Great Neck, Lynbrook, Woodbury, and Yorktown Heights, N.Y., and Newark, N.J., concerning the immediate practical effect of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). The parties have now resolved that dispute as follows:

Cablevision has agreed to continue full-time carriage of WNYC-TV on its cable systems in Great Neck, Lynbrook, and Yorktown Heights and to continue substantially the same part-time carriage of WNYC-TV as presently exists on its cable system in Woodbury. On the Newark, N.J. system, part-time carriage of WNYC-TV will be slightly modified, with Cablevision continuing to carry WNYC-TV's Japanese-language programming (Fuji) on Monday-Friday 7:00 a.m.-9:00 a.m. and Sunday 7:00 p.m.-8:00 p.m. and Italian-language programming (RAI) on Monday-Friday 6:00 p.m.-8:00 p.m. and Sunday 8:00 a.m.-2:00 p.m.. On the Woodbury, N.Y. system, Cablevision will continue to carry WNYC-TV's Italian-language programming (RAI) on Monday-Friday 6:00 p.m.-8:00 p.m. and Sunday 8:00 a.m.-2:00 p.m.. Thus, Cablevision will be continuing carriage of almost all WNYC-TV programming now carried on the five systems in question.

In exchange, WNYC has agreed to withdraw the complaint in this matter. That withdrawal is without prejudice and without waiver of WNYC's right to the subsequent reassertion of the complaint in its entirety or any claim therein, including but not limited to claims concerning deletion of carriage in whole or in part, channel positioning, and/or refusal of requested carriage.

The parties have also agreed: (1) that a jointly issued release will be served, along with this letter, on all entities served with WNYC's original complaint and petition, and (2) that Cablevision will advise affected viewers through an appropriate notice of continuing carriage of WNYC-TV programming. A copy of the jointly issued release is enclosed. If you have any questions concerning this matter, please contact me and Charles Forma, Esq., Cablevision Systems Corporation, One Media Crossways, Woodbury, N.Y. 11797-2013 (516-496-1214).

The text of this letter has been reviewed and agreed to by Mr. Forma.

Very truly yours,



David B. Goldin  
Assistant Corporation Counsel

cc. Charles Forma, Esq.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Community Television Foundation of South Florida, Inc.  
against National Cable Limited

CSR-3786

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: July 29, 1993

Released: August 6, 1993

By the Chief, Mass Media Bureau:

INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 ["the Cable Act"] became law.<sup>1</sup> On December 4, 1992, the Cable Act's requirements for mandatory carriage of certain noncommercial educational stations set forth in §5 of the Act became effective.<sup>2</sup> On February 17, 1993, Community Television Foundation of South Florida, Inc., licensee of Station WPBT (Educ., Channel 2), Miami, Florida, filed a complaint seeking to ensure the station's carriage on channel 2 on the cable system serving Palm Beach County, Florida which is operated by National Cable Limited ("National"). National filed an opposition to this complaint on March 11, 1993,<sup>3</sup> and supplemented the opposition on April 13, 1993.<sup>4</sup>

SUMMARY OF PLEADINGS

2. WPBT complains that, despite its status as a qualified local noncommercial educational television station which places a Grade B contour over National's headend and which is entitled to on-channel carriage rights on cable channel 2 on National's cable system, National has repositioned WPBT to channel 35. This, states WPBT, is contrary to the station's wishes and, therefore, is a violation of its rights under the 1992 Cable Act and the Commission's implementing rules. WPBT notes that on March 29, 1990, on July 19, 1985, and at all times until approximately

December 1, 1992, it was carried on cable channel 2 by National. On or about that date, however, National substituted Discovery on channel 2, without notice to WPBT, and placed WPBT on cable channel 35. WPBT requested continued carriage on cable channel 2 on December 10, 1992. It states that National refused to do so by letter dated December 17, 1992.

3. In opposition, National argues that it has not refused to carry WPBT or to place it on any specific channel; rather, it merely stated that it would consider WPBT's request after a court upheld the constitutionality of the must-carry provisions of the 1992 Cable Act and the Commission adopted implementing rules. National notes that WPBT has not paid a filing fee with its must-carry complaint, and that its principal community is more than fifty-five miles from National's headend. National states that it already carries another noncommercial educational station affiliated with the State public television network, and it has asked WPBT for its programming schedule, which it has yet to receive, so it may compare the two stations for potential duplication. National suggests either that the Commission dismiss this complaint, or that it allow National to supplement its opposition after the Commission adopts its mandatory carriage rules and the constitutionality of the statutory must-carry provisions is resolved. In its supplemental opposition, National states that it is carrying WPBT and that it has no present intent to cease doing so, but that it has not repositioned WPBT since December 4, 1992, and that WPBT is not in fact entitled to on-channel carriage rights until October 6, 1993.

DISCUSSION

4. We uphold WPBT's complaint against National. Initially, we note that on April 8, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving *Turner Broadcasting Systems, Inc., et al. v. Federal Communications Commission*, Civil Action No. 92-2247 (D.D.C. April 8, 1992), which upheld the provisions of the 1992 Cable Act that had been challenged as violating plaintiffs' constitutional rights and which terminated the 120 day *Standstill Order* previously issued in the case. Moreover, §5(g)(5) of the Cable Act, as implemented by §76.57(b) of the Commission's Rules, requires that the signal of a noncommercial educational broadcast station carried on a cable television system pursuant to the must-carry requirements must appear on the cable system channel number on which the qualified local noncommercial educational station is broadcast over-the-air or on the channel on which it was carried on July 19, 1985, at the election of the noncommercial educational

<sup>1</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>2</sup> 47 U.S.C. §535.

<sup>3</sup> On March 11, 1993, the Commission adopted a *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993) ["*Report and Order*"]. In view of the fact that the rules adopted therein could have an impact upon a cable system's obligation to carry certain noncommercial educational stations, and could also affect the resolution of a disputed carriage request already on file with the Commission, parties opposing such requests on file were permitted 15 days to file a supplemental pleading after the release date of the *Report and Order*, *supra*. Public Notice, "Carriage of Noncommercial Educational Stations by Cable Television Systems." Mimeo No. 32419 (released March 26,

1993). Replies to such supplemental opposition could be filed within 5 days. *Id.*

<sup>4</sup> In addition, National filed a "Request for Extension of Time" on May 3, 1993, for ten more days to and including May 13, 1993, to supplement its opposition. On May 10, 1993, WPBT filed an opposition to this request. On May 12, 1993, National filed a letter stating that it believed current negotiations with WPBT would "... result in a settlement of all issues between the parties." Thereafter, no further pleadings were filed, and Commission staff was informed by telephone that the negotiations had ceased. In view of these facts, it is no longer necessary to rule on National's "Request for Extension of Time" or on WPBT's opposition to it.

station. WPBT's assertion is unrefuted that it was carried on National's system serving Palm Beach County, Florida on cable channel 2 on July 19, 1985. WPBT elects to continue to be carried on that channel, and it has been entitled to such carriage since December 4, 1992, the effective date of §5 of the 1992 Cable Act.<sup>3</sup>

5. National's argument challenging WPBT's rights to on-channel carriage are not persuasive. WPBT is clearly a qualified noncommercial educational television station within the meaning of the 1992 Cable Act and our rules. Its assertion that it places a Grade B contour over National's headend, and is therefore a "local" signal entitled to mandatory carriage on National's system, is unrefuted. Moreover, National has not submitted any additional showings to meet its burden of proof concerning its allegation of potential program duplication by WPBT. Finally, we note that noncommercial stations are not required to submit filing fees to the Commission for processing their mandatory carriage requests.

6. In view of the foregoing, we find that grant of WPBT's petition is in the public interest.

7. Accordingly, IT IS ORDERED. That the petition for special relief (CSR-3786) filed February 17, 1993, by Community Television Foundation of South Florida, Inc. IS GRANTED in accordance with §615(g)(5) and with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended.

8. IT IS FURTHER ORDERED. That National Cable Limited SHALL CARRY the signal of WPBT on cable channel 2, on National's cable system serving Palm Beach County, Florida, within forty-six (46) days of the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

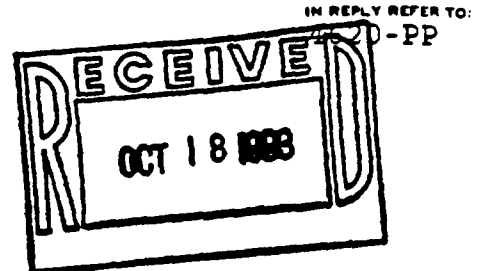
<sup>3</sup> We note that the Commission Rule implementing an October 6, 1993 deadline for fulfilling a local must-carry station's channel positioning request applies only to commercial stations.

See 47 C.F.R. §76.57(d). The channel positioning requirement for noncommercial stations set forth in the 1992 Cable Act was self-effectuating, and became effective on December 4, 1992.

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

OCT 15 1993



David M. Fogarty  
President and General Manager  
Greater Dayton Public Television  
TeleCenter  
110 S. Jefferson Street  
Dayton, Ohio 45402-2415

In re: Greater Dayton Public Television  
(WPTD)  
CSR-3931-M; IN0339  
CSR-3932-M; IN0011  
CSR-3934-M; IN0402

Dear Mr. Fogarty:

On July 19, 1993, you filed petitions for declaratory ruling, on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, claiming that TCI of Indiana, Inc. had declined to reposition WPTD on Channel 16 on its systems serving Dublin and Richmond, Indiana, and declined to carry WPTD on its system serving Lynn, Indiana. Subsequently, by letters dated September 13, 1993, you requested dismissal of these petitions as TCI has agreed to reposition and/or carry the station on all three systems.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petitions for declaratory ruling, filed July 19, 1993, on behalf of WPTD, are dismissed.

Sincerely,

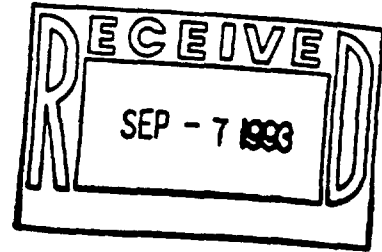
Ronald Parver  
Chief, Technical Services Branch  
Cable Services Division

GD 001285

*We're taking television  
into tomorrow.*



TCL of Indiana, Inc.



September 1, 1993

Mr. David Fogarty, Director of Broadcasting  
WPTD/WPTO  
4th & Jefferson Sts.  
Dayton, OH 45402

Dear Mr. Fogarty:

I am writing to inform you, effective September 1, 1993, WPTD-16 has been moved to channel 16 on our Richmond and Dublin systems. Also, WPTD has been added to our Lynn system and is positioned on channel 16.

WPTO-14 has been added to the Richmond system on channel 19, the Dublin system on channel 18 and the Lynn system on channel 17. Per our earlier discussion, I understand the placement of WPTO-14 is unacceptable, but temporary.

It is our intention to come to an agreement with an acceptable location for WPTO-14. I am presently in a position to discuss the placement of WPTO-14 on channel 4. Please let me know what considerations would be acceptable so that we can plan re-arrangements prior to October 6th.

Sincerely,



Rich Cody  
Area Manager

cc Tom Barberini

2428 Chester Blvd.  
Richmond, Indiana 47374  
(317) 966-8321  
FAX (317) 966-3753  
An Equal Opportunity Employer

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Greater Dayton  
Public Television against  
TCI Cablevision of  
Indiana, Inc.  
Request for Carriage

CSR-3937-M  
CSR-3933-M  
IN0025

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTO (Educ., Ch. 14), Oxford, Ohio and WPTD (Educ., Ch. 16), Dayton, Ohio, were filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving Winchester, Indiana, had declined to carry the station, even though, allegedly, the Grade B contour of WPTD encompasses the system's principal headend at north latitude 40° 1' 00" and west longitude 84° 59' 31" and Oxford, the city of license of WPTO is within fifty miles of the same location. Both stations, therefore, are "local" signals within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO and WPTD both request that the Commission not only order TCI to carry their signals, but also order that the system carry them on channels 14 and 16, respectively, the channels on which they broadcast over-the-air. No opposition to these petitions has been filed.

2. Staff review of the issues raised and of the materials submitted in WPTD's petition fails to demonstrate that TCI's headend lies within WPTD's Grade B contour.<sup>1</sup> Therefore, the 1992 Cable Act does not entitle WPTD to mandatory carriage on the TCI cable television system serving Winchester, Indiana, and the complaint filed July 19, 1993, by Greater Dayton Public Television (CSR-3933-M) IS DISMISSED pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended.

3. WPTO's petition, however, establishes that it is entitled to carriage on the Winchester cable system because Oxford, Ohio, the city of license of WPTO, is within fifty miles of TCI's headend.<sup>2</sup> WPTO has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 19,

1993, by Greater Dayton Public Television (CSR-3937-M) IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. These actions are taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

<sup>1</sup> Calculations for Grade B contours of television stations are based upon the current licensed parameters of the television stations(s) in question and using the methods set forth in §73.684 of the Commission's Rules (Prediction of Coverage).

<sup>2</sup> The distance computations are based upon the reference

point(s) (for the television station's community of license) in §76.53 of the Commission's Rules and the principal headend coordinates provided in the petition and applying the methods in §73.611 of the Commission's Rules (Reference Points and Distance Computation).

**In re:**  
**Complaint of Greater Dayton**  
**Public Television against**  
**Country Cable Systems**

**Request for Carriage**

**CSR-3945-M**

## 1

## Federal Communications Commission

494679

DA 95-104

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Greater Dayton  
Public Television against  
Chillicothe Cablevision dba  
Dimension Cable Services

CSR-4027-M  
OH0045

Request for Carriage

## MEMORANDUM OPINION AND ORDER

Adopted: January 20, 1995; Released: February 2, 1995

By the Cable Services Bureau:

1. On August 26, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Chillicothe Cablevision dba Dimension Cable Services ("Dimension"), operator of a cable television system serving Washington Court House, Bloomingburg, Sabina, Jeffersonville, Milledgeville, Octa, Union, and portions of Clinton County, Ohio, had declined to carry the station, even though the city of license of WPTD is within fifty miles of the system's principal headend located at Latitude 39°31'38" and Longitude 83°28'37", and the station is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD also requests that the Commission not only order Dimension to carry the signal, but also order the system to carry it on Channel 16, the channel on which it broadcasts over-the-air. Oppositions to this petition were filed on September 16, 1993 and October 21, 1993, on behalf of Dimension, to which WPTD has replied.

2. In support of its request, WPTD states that it was notified by Dimension on April 26, 1993, that it did not provide a good quality signal at Dimension's headend.<sup>1</sup> By letter dated May 28, 1993, WPTD states that it agreed to bear the costs of providing the pre-amplifier necessary to provide a good quality signal, but in a June 25, 1993 response, Dimension placed several conditions on the type, use and ownership of the proposed equipment. On July 27, 1993, WPTD indicates that it reiterated its agreement to bear the costs of the equipment and also agreed to use a Blonder-Tongue SCMA-ub low-noise 25-dB preamplifier. It also requested to discuss the proposal with Dimension, however, WPTD asserts that Dimension neither responded to this request nor commenced carriage of its station.

3. Dimension's September 16, 1993 opposition does not dispute that WPTD is a qualified NCE station, but it maintains that until such time as WPTD provides a good quality signal at Dimension's headend the station is not eligible to be carried. Dimension argues that it has repeatedly expressed its willingness to allow WPTD to provide the equipment necessary to ensure a good quality signal and it will add the station in forty-five days once the equipment is in place. However, Dimension disagrees with WPTD's contention that the station is only obligated to reimburse Dimension for the cost of the necessary equipment. Dimension feels that it should be incumbent upon the requesting station to provide the equipment and it requests that the Commission explicitly state this in its decision.

4. WPTD's response indicates that on September 14, 1993, the parties agreed by telephone that WPTD would purchase a 12.5-dB gain antenna and a pre-amplifier to rectify its signal deficiency at Dimension's headend. Indeed, WPTD states that it ordered the equipment on September 20, 1993, with an expected delivery date in 3-6 weeks. Upon its installation, Dimension agrees that it will be required to add WPTD within 45 days. Despite the fact that in this instance WPTD agreed to purchase the equipment as requested, it disagrees with Dimension's view that a television station should be required to purchase any necessary equipment, rather than provide reimbursement for costs, in all instances. WPTD has encountered many cable system operators that prefer to buy their own equipment. Dimension's requirement is too narrow and would inhibit future negotiations between television stations and cable operators. Therefore, the FCC should not render this type of arrangement mandatory. Finally, WPTD points out that Dimension has made no mention in any of its negotiations that it will carry WPTD on-channel as requested. WPTD requests that the FCC uphold and enforce its right to such carriage.

5. On October 21, 1993, Dimension submitted a second opposition to WPTD's petition. It states that although the problem with signal quality has been resolved, the issue of channel positioning remains an area of contention. Dimension avers that carriage of WPTD on-channel would result in several serious and substantial technical complications and would cause potential interference. Dimension states that channel 16, the channel on which WPTD broadcasts over-the-air, is the aeronautical frequency band on which it maintains a narrow tolerance of 5 kHz, pursuant to §76.612(a)(1) of the Rules. Meeting the on-channel requirement, Dimension contends, would be nearly impossible using standard equipment as the signal processor device required to carry an off-air signal on channel 16 has two local oscillators which will not hold the 5 kHz tolerance. To ensure stability, Dimension states that it would be required to either 1) phase lock the channel 16 processor to a comb generator at a cost of \$6800, or 2) demodulate and modulate the signal at a cost of \$5300. In addition, it continues, further technical modifications, such as additional traps, brackets and "F" connectors, would be necessary solely to carry WPTD on-channel. Dimension maintains that all of this would cost approximately \$31,000 or \$4.30 per subscriber. Further, it feels it likely that the additional traps and "F" connectors would increase signal

<sup>1</sup> Dimension indicated that on April 22, 1993, WPTD was measured at -60 dBm at its headend. The measurements were taken with a Wavetek Sam ID/UHF field strength meter and

reception was taken on a Radio Shack Model U-75 UHF broadband antenna 30' above grade.

DA 95-104

## Federal Communications Commission

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leakage on its system, thus increasing the system's monitoring and maintenance costs in this area.<sup>2</sup> Finally, Dimension argues that the use of traps would have a negative variance effect of 5 dB on the signal quality of adjacent channels, particularly the sound carrier. This could cause problems for Dimension in meeting the FCC aural carrier level standards that require cable operators to maintain an aural signal between 10 and 17 dB below the associated visual signal level. Dimension concludes, therefore, that while it recognizes its obligation to honor WPTD's on-channel carriage request, it should be not required to do so in this instance due to the potential problems. It stands prepared to discuss alternative channel positions with WPTD at any time.

6. WPTD requests that the Commission strike Dimension's second opposition as duplicative and untimely. It avers that Dimension had ample opportunity to raise the issue of alleged technical and cost objections to on-channel carriage in its September 16, 1993 filing. Should the FCC consider the arguments raised in this pleading, however, WPTD contends that Dimension's claims are unsubstantiated and it has provided no evidence that clearly demonstrates that it cannot meet this requirement. See Paragraph 91 of the *Report and Order in MM Docket 92-259*, 8 FCC Rcd 2965 (1993). WPTD argues that there is no "substantial technical or signal security problem" with regard to Dimension's aeronautical frequency band concern. Dimension admits that the technology is readily available to ensure WPTD on-channel carriage. WPTD should therefore not be penalized because cable systems, such as Dimension, have chosen the frequency band of 118-136 MHz for channels 14-16. Moreover, the majority of Ohio and Indiana cable operators which carry WPTD on channel 16 have made equipment modifications at their own expense.<sup>3</sup> WPTD states that Dimension's cost estimates, without further documentation, are inadequate and possibly higher than necessary.

7. Further, it maintains that it would be against the intent of the 1992 Cable Act to require an NCE station to pay for a cable system's upgrades in plant in circumstances of this kind. The equipment necessary for on-channel carriage, avers WPTD, should be considered a business investment by the cable system, not the station. In the *Clarification Order in MM Docket 92-259*, 8 FCC Rcd 4142 (1993), the Commission limited a station's expenditures to situations of low signal level. WPTD has already agreed to incur those expenses in this instance. Further, WPTD contends that Dimension's assertions as to additional equipment needs, signal leakage concerns and alleged effects on audio quality are all speculative, unpersuasive and not considered sufficient to deny an on-channel carriage request. See *Report and Order, supra*, at Paragraph 91. WPTD points out that 1) all of the equipment cited by Dimension is already in use on the system, 2) a potential for signal leakage exists any time a cable is cut to insert traps or equipment, and 3) Dimension's alleged "negative effect" argument is unacceptable without supporting documenta-

tion, particularly when WPTD is aired on channel 16 on other Dayton area cable systems without similar complaints. In conclusion, WPTD requests that the FCC dismiss Dimension's arguments and order it to carry WPTD on-channel as required by the Rules.

8. We are not persuaded by Dimension's request that the FCC explicitly require that any equipment needed to correct the reception of a poor quality signal be purchased by the television station requesting carriage. The *Report and Order, supra*, at paragraph 104 states that "Further, we generally agree with cable interests that it is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend." (emphasis supplied) Generally, therefore, we would expect that, once those costs have been determined to the parties' satisfaction, the cable operator be the entity responsible for whatever modifications are necessary since the facility is under its control. However, if the parties so desire they are free to make whatever agreements they wish in this regard.

9. Section 614(b)(6) of the 1993 Cable Act permits a must-carry station to elect its over-the-air channel number as its channel position on a cable system and WPTD has properly chosen its over-the-air channel. Further, the Commission has stated previously that cable operators must comply with the channel positioning requirements, absent a compelling technical reason.<sup>4</sup> Dimension has failed to make such a demonstration. The Commission specifically held that the need to replace traps, or to reconfigure the basic tier, or to make technical changes are generally not grounds for waiver. Carriage of television stations, such as WPTD, on a channel located in the aeronautical frequency band is a common practice in the cable industry. Dimension has failed to demonstrate how its carriage of WPTD on channel 16 would involve any special circumstances beyond the necessity of simply meeting the Commission's technical standards. In this regard, all cable operators are required to routinely monitor their systems to detect and correct signal leakage problems in compliance with the Commission's technical rules. See §76.601 *et seq.* of the Commission's Rules. Further, Station WPTD's obligations to provide a good quality signal stop at the point where such is delivered to Dimension's cable television system's headend. WPTD is under no obligation to pay for the necessary equipment used by the cable system to process and distribute WPTD's signal. See *Report and Order, supra*.

10. Accordingly, in light of the above, we do not believe that a waiver of the must-carry rules with respect to Dimension's system serving Washington Court House, Bloomingburg, Sabina, Jeffersonville, Millersburg, Octa, Union, and portions of Clinton County, Ohio, serves the public interest.

11. WPTD's petition, therefore, establishes that it is entitled to carriage on the system serving Washington Court House and surrounding communities and it has requested carriage on its over-the-air broadcast channel, as it is

<sup>2</sup> Dimension states that 33% of its reportable leakage is due to "F" connectors, as well as over 10% of its service calls.

<sup>3</sup> WPTD encloses materials from Scientific-Atlanta and the NCTA which describe the available techniques used to comply with the FCC's technical standards.

<sup>4</sup> As stated in Paragraph 91 of the *Report and Order, supra*, "We do not believe that inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ addi-

tional traps or make technical changes are sufficient reasons for denying the channel positioning request of a must-carry signal. Only where placement of a signal on a chosen channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem, will we permit cable operators to carry a broadcast signal on a channel not chosen by the station."

SENT BY:

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**Federal Communications Commission**

**494681**

DA 95-104

permitted to do under Section 5 of the 1992 Cable Act. Accordingly, the petition filed August 26, 1993, by Greater Dayton Public Television IS GRANTED, pursuant to Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Chillicothe Cablevision dba Dimension Cable Services IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this Order.

12. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.

**FEDERAL COMMUNICATIONS COMMISSION**

William H. Johnson  
Deputy Chief, Cable Services Bureau

**GD 001991**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Greater Dayton  
Public Television against  
Paxton Cable Television, Inc.

CSR-4028-M  
OH2024

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1993; Released: February 16, 1994

By the Chief, Mass Media Bureau:

1. On August 26, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Paxton Cable Television, Inc. ("Paxton"), operator of a cable television system serving Midway, Ohio, had declined to carry the station, even though WPTD is within fifty miles of the system's principal headend located in Midway at Latitude 39°36'33" and Longitude 84°04'31", and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD requests that the Commission not only order Paxton to carry its signal on the cable system, but also order that the system carry it on channel 16, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTD's petition establishes that it is entitled to carriage on the Midway system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 26, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, and Paxton Cable Television, Inc. IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

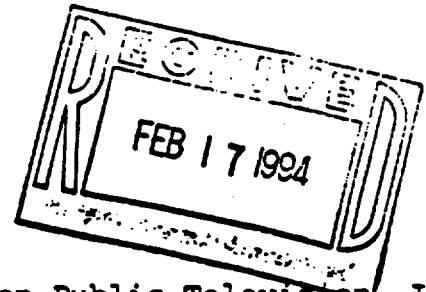
Roy J. Stewart  
Chief, Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEB - 9 1994

IN REPLY REFER TO:  
4620-SP

David M. Fogarty, President  
Greater Dayton Public Television, Inc.  
TeleCenter  
110 South Jefferson Street  
Dayton, Ohio 45402-2415



In re: Greater Dayton Public Television, Inc.  
(WPTD)  
CSR-4029-M

Dear Mr. Fogarty:

On August 23, 1993, you filed a petition for declaratory ruling on behalf of Greater Dayton Public Television, Inc., licensee of Station WPTD (Educ., Ch. 16), Dayton, Ohio, claiming that Time Warner Cable had not only declined to carry Station WPTD, but also refused to reposition the station on channel 16 on its system serving Union City, Ohio and Union City, Indiana. Subsequently, on November 3, 1993, you requested dismissal of this petition as Time Warner has agreed to carry WPTD and reposition the station on or before January 1, 1994.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling filed August 23, 1993, on behalf of Station WPTD is dismissed.

Sincerely,

Ronald Parver  
Chief, Technical Services Branch  
Mass Media Bureau

GD 000612

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

DEC 14 1993

IN REPLY REFER TO:  
4620-SP

David M. Fogarty, President  
Greater Dayton Public Television, Inc.  
TeleCenter  
110 South Jefferson Street  
Dayton, Ohio 45402-2415

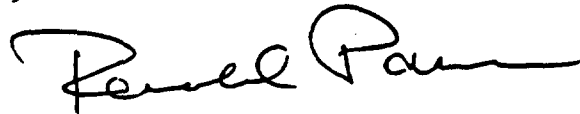
In re: Greater Dayton Public  
Television, Inc.  
(WPTD)  
CSR-4030-M  
OH0914

Dear Mr. Fogarty:

On August 26, 1993, you filed a petition for declaratory ruling on behalf of Greater Dayton Public Television, Inc., licensee of Station WPTD (Educ., Ch. 16), Dayton, Ohio, claiming that Time Warner Cable had not only declined to carry Station WPTD, but also refused to reposition the station on channel 16 on its system serving Oxford, Ohio. Subsequently, on November 3, 1993, you requested dismissal of this petition as Time Warner has agreed to carry WPTD and reposition the station.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling filed August 26, 1993, on behalf of Station WPTD is dismissed.

Sincerely,



Ronald Parver  
Chief, Technical Services Branch  
Cable Services Division  
Mass Media Bureau

GD 001271

*WORK FILE*  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

JAN 3 1994

IN REPLY REFER TO:  
4620-SP

David M. Fogarty  
President & General Manager  
Greater Dayton Public TV  
110 S. Jefferson Street  
Dayton, Ohio 45402-2415

In re: Greater Dayton Public TV  
(WPTD)  
CSR-4038-M

Dear Mr. Fogarty:

On August 27, 1993, you filed a petition for declaratory ruling, on behalf of Greater Dayton Public TV, licensee of Station WPTD (Ind., Ch. 16), Dayton, Ohio, claiming that B&L Cablevision had declined not only to carry its signal, but refused to carry it on Channel 6 on its systems serving Port William and Bowdersville, Ohio. Subsequently, on November 29, 1993, you requested dismissal of this petition as B&L Cablevision has agreed to carry the station on Channel 6, as requested.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling filed August 27, 1993, is dismissed.

Sincerely,

Ronald Parver  
Chief, Technical Services Branch  
Cable Services Division  
Mass Media Bureau

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re:

Complaint of Greater Dayton  
Public Television against  
Sammons Communications, Inc.

CSR-4089-M  
IN0057

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: August 19, 1994; Released: September 27, 1994

By the Chief, Cable Services Bureau:

1. On October 4, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Sammons Communications ("Sammons"), operator of a cable television system serving Connersville, Indiana,<sup>1</sup> had declined to carry the station, even though WPTD's city of license is within fifty miles of the system's principal headend located in Connersville at N. Latitude 39°37'55" and W. Longitude 85°06'10" and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD also requests that the Commission not only order Sammons to carry its signal, but also order the system to carry on Channel 16, the channel on which it broadcasts over-the-air. An opposition to this petition has been filed on behalf of Sammons to which petitioner has responded.

2. In support of its petition, WPTD states that prior to its formal request for carriage on June 1, 1993, it was informed by the system's previous owner, Cardinal Communications, Inc. ("Cardinal"), of its station's signal strength deficiency at the Connersville headend. At the same time, WPTD indicates that it was also informed of Cardinal's concerns over the possibility of increased copyright costs should WPTD be carried. In its June 1, 1993 letter, WPTD agreed to indemnify Cardinal for any increased copyright costs once specific estimates were supplied and asserted its right to carriage on cable channel 16. Cardinal subsequently presented an estimate of the expected copyright costs,<sup>2</sup> as well as signal quality readings performed on June 15, 1993, which indicated a +5 dBmV (or -44 dBm) signal

level for WPTD which meets our standards.<sup>3</sup> Moreover, on the test sheet accompanying the engineering study, Cardinal answered affirmatively to the question as to whether the station met the signal quality standards. Despite this, however, the system requested that WPTD pay the costs of installing the equipment necessary to receive the station at its principal headend.<sup>4</sup> Further, the system sought payment in advance for both the copyright fee and equipment costs as a condition of WPTD's carriage. By letter dated July 16, 1993, WPTD rejected both of these conditions. After the system was sold to Sammons, it also refused to carry the station until such time as it is reimbursed in advance for the costs of additional equipment and copyright liability. To date, WPTD states that it has not been added to the Connersville system.

3. In its response, Sammons states that it has had ongoing discussions regarding the carriage of WPTD, but the station has never been carried on the Connersville system in the past and no equipment is located on the tower which would enable it to receive the signal. Sammons maintains that the *Clarification Order in MM Docket No. 92-259*, 8 FCC Rcd 4142 (1993), requires the broadcaster, and not the system, to bear the cost of any specialized antennas or equipment necessary for the reception of a signal. It argues that in this instance it is only asking WPTD to pay for the cost of the antenna while Sammons states that it will buy other necessary equipment. Finally, Sammons emphasizes that it is not unreasonable to require WPTD to pay the expected copyright costs for its carriage in advance since Sammons will be ultimately responsible for such costs immediately upon adding the station.

4. WPTD states in reply that the *Clarification, supra*, requires a broadcaster to reimburse a system for equipment only in instances where such equipment is necessary to enhance a station's signal quality to enable it to provide a good quality signal. In this case, WPTD avers, test results have shown that it provides a good quality signal to the Connersville headend. Therefore, it insists, it is not required to pay for the cost of an antenna. Finally, WPTD maintains that since its predicted Grade B contour encompasses the entire community of Connersville, the only copyright liability that might incur from its carriage on Sammons' system would be for a community that falls outside the Grade B contour. Nevertheless, WPTD reiterates its willingness to pay any such costs, but insists that the Commission's rulings in the *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993), and *Clarification, supra*, do not require it to pay anticipated costs in advance.

5. We are not persuaded by Sammons' request that WPTD be required to reimburse the system for the cost of an antenna to receive the signals. The *Report and Order, supra*, at paragraph 104 states that "... we generally agree ... that it is the television station's obligation to bear the costs associated with delivering a good quality signal to the

<sup>1</sup> The Connersville system was operated by Cardinal Communications, Inc. up until July 22, 1993, when it was purchased by Sammons.

<sup>2</sup> On June 10, 1993, Cardinal indicated a copyright fee of approximately \$7,383.54 per six months period, but after discussion with WPTD agreed that the amount of \$1,110.48 per six months was a more accurate figure.

<sup>3</sup> A standard of -45 dBm was established as a minimum for determining the availability of UHF commercial stations at a cable system's headend. Since these standards address the issue

of availability of a station's signal, consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as *prima facie* tests to initially determine whether a NCE station provides a cable system with a good quality signal.

<sup>4</sup> In a breakdown of the costs associated with the purchase of the equipment necessary to add WPTD to its system (i.e., preamp, dish, etc.), Cardinal indicated that it would cost approximately \$1,165.33.

system's principal headend (emphasis supplied)." Further, at paragraph 11 of the *Clarification, supra*, we state that "cable operators may not shift the costs of routine reception of broadcast signals to those stations seeking must-carry status." In the instant case, Sammons does not dispute that WPTD provides a good quality signal to its headend. Therefore, WPTD is not obligated to provide the cost of any equipment Sammons feels necessary to receive its signal. In addition, as we stated at paragraph 114 of the *Report and Order, supra*, "We . . . believe that it is reasonable for a cable operator to receive a written commitment from a broadcaster that ensures that the [copyright] payments will be made once the actual amount of copyright liability is determined." WPTD has satisfactorily met this requirement. Further, at footnote 19 of the *Clarification, supra*, it states that ". . . a cable operator may not demand advance payment of estimated copyright fees as a condition for broadcasts to retain must-carry rights." As a result, Sammons cannot deny WPTD carriage on this ground.

6. WPTD's petition establishes that it is entitled to carriage on the Connersville cable system, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Accordingly, the petition filed October 4, 1993, by Greater Dayton Public Television IS GRANTED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Sammons Communications IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's Rules.

#### FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones  
Chief, Cable Services Bureau